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THE

JURISDICTION

OF THE

COURT LEET:

EXEMPLIFIED

IN THE

ARTICLES

WHICH THE

JURY OR INQUEST FOR THE KING,

In that Court,

IS CHARGED AND SWORN, AND BY LAW ENJOINED,

TO INQUIRE OF AND PRESENT.

TOGETHER WITH

APPROVED PRECEDENTS.

SECOND EDITION, WITH GREAT ADDITIONS.

BY J. RITSON, ESQ. OF GRAY'S INN.

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THE great Favour with which the first Edition of this Work was received, has been an Inducement to print a second Edition; in which very considerable Additions and Improvements have been made.

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INTRODUCTION.

TO the following pages concerning the court leet, it may not be improper to prefix a few words upon the name, antiquity, nature, and present state of this ancient and venerable tribunal.

I. The name or style of this court, as formally entered in its own proceedings, is the "Court Leet and View of Frankpledge;" or "Court Leet, with View, &c." The word *leet*, which, it is very remarkable, is to be found neither in the Saxon law, nor in Glanvil, Bracton, Britton, Fleta, or the Mirror, our most ancient law writers, nor in any statute prior to the 27th year of King Ed.III.* though it is allowed to occur in the Conqueror's charter for the foundation of Battle Abbey, and not unfrequently in Domesday book†, seems to be derived from the Saxon leoð, *plebs*, and to mean the *populi curia*, or folk mote, as the sheriff's tourn or leet of the county (at least) appears to have been once actually called‡; in contradistinction, perhaps, to the halmote or court baron, which consisted of the free tenants only, who, being few in number, might conveniently assemble in the lord's hall; whereas the leet, which required the attendance of all the resiants, and concerned the administration of public

* C. 28. After which it does not appear again till the 4. *E.* 4. *c.* 1. See also 12. *E.* 4. *c.* 9.

† *Spelman's Glossary, v. Leta.*

‡ *Spelman v. Folkesmote. Kennet's Parochial Antiquities. Glos. v. Falmote.*

justice, was, as there will be hereafter occasion to mention, usually held in the open air. The "View of Frankpledge," *visus franciplegii*, means the examination or survey of the freepledges, of which every man, not particularly privileged, was anciently obliged to have nine, who were bound that he should be always forthcoming to answer any complaint. The better to understand this, we are to be informed that the kingdom being divided into countys or shires, and each county into hundreds, and each hundred into tithings, each tithing containing ten families or households, the heads of these families were reciprocally bound and responsible for each other; so that, in fact, of every ten householders, throughout the kingdom, each man had nine pledges or sureties for his good behaviour*. This is the famous system of King Alfred, so much applauded by both ancient and modern writers. Since, however, this so excellent and admirable institution is, from whatever cause, sunk into

* Of these pledges the eldest, or most respectable, and first sworn, was called the headborough or chief pledge, and had a degree of authority over the rest, not now exactly ascertained. It was, however, in all probability, much the same with that of the constable, who was formerly a character of great consequence, and is to this day, in many places, called the *headborough;* a word which, according to Sir William Blackstone, (too implicitly following Sir Thomas Smith) bespeaks its own etymology, and means "the discreetest person in the *borough*." Great lawyers, however, are sometimes indifferent etymologists; the word, in fact, implies nothing more or less than the chief pledge, from borg, borh, or borhoe, *fidejussor*, a pledge or surety. He was also called the *borsalder* (borges ealder) *(i. e.* the eldest of the pledges, and the *tithing man)*. Both *tithing man* and *borsholder* are to be found in modern statutes as synonimous with *constable* and *headborough*. But at what period the constable became a distinct officer, and the chief pledges were metamorphosed into a grand jury, is a point which must be left to a more successful inquirer.

total disuse, there not having been any freepledges in the kingdom for two or three centuries, the words "View of Frankpledge," in the stile of the court, seem now altogether unnecessary and improper. It is also called a *law-day* *.

II. That the leet is "the most ancient court in the land" (for criminal matters, that is, the court baron being of no less antiquity in civil) has been pronounced by the highest legal authority †. For though we do not meet with the *word* among the Saxons, there can be no doubt of the existence of the *thing* ‡. In those times, whoever possessed a vill or territory, with the liberties of *soc*, *sac*, &c. was the lord of a manor, had a court leet, court baron, and, in a word, every privilege which it seems to have been possible for the monarch to bestow, or for the subject to acquire §.

* 32. *H.* 8. *c.* 13. 33. *H.* 8. *cc.* 6. 9. 2. and 3. *P.* and *M.* *c.* 8. 4. and 5. *P.* and *M.* *c.* 3. 18. *Eliz.* *c.* 10. 1. *Ja.* 1. *c.* 22. 21. *J.* 1. *c.* 21. *Dyer*, 30. *b.* *Bacon's Law Tracts*, 115. *Sir T. Smith's Commonwealth of England*, *p.* 156. See also 1. *E.* 4. *c.* 2.

† 7. *H.* 6. 12. *b.* 1. *Roll. R.* 73.

‡ 3. *Bur.* 1860.

§ *Vide* Spelman *v. Manerium.* The position used by Fineux in 12. *H.* 7. 15. that the leet is derived out of the sheriff's tourn, is not entitled to any particular notice, being a mere unsupported *dictum*; to which neither *Lord Coke's* adoption (2. *Inst.* 71.), nor that of *Lord Mansfield* (3. *Bur.* 1860.), can add any weight. Much matter, and many authorities, must be sacrificed throughout this little inquiry for the sake of brevity. As to the rest, the word leet, though generally appropriated to the court of a manor, has in fact nothing essentially distinct from the tourn, but the being upon a smaller scale. (See, however, *Britton*, *c.* 29. 44. *E.* 3. 9. 1. *E.* 4. *c.* 2.) Those writers, therefore, who suppose the leet of a hundred or manor inferior to, or subject to the control of, the tourn or leet of the county, are egregiously mistaken; the jurisdiction of the latter being confined to so much of the county or hundred not comprised within the precinct of

III. The leet is a court of record for the cognisance of criminal matters, or pleas of the crown, and necessarily belongs to the king; though a subject, usually the lord of a manor, may be and is entitled to the profits, consisting of the essoign pence, fines, and amerciaments. It is held before the steward (or was, in ancient times, before the bailiff) * of the lord; that is, of the person entitled to the perquisites of court, whether king or subject. This officer, who should be a barister of learning and ability†, is a judge of record ‡, may take recognizance of the peace §, may fine ‖, imprison ¶, and, in a word, "as to things to which his power extends, hath equal power with the justices of the bench**". In one instance, at least, perhaps, he has even more; for, if he should be in want of jurors, he may compel a stranger, who is riding along the highway, to alight and be sworn††. It is held sometimes once, sometimes

the manor. See 4. *Inst.* 261. It is indeed repeatedly said, in our old books, that things, of which the leet (of a manor, that is) omits to inquire, shall be inquired of in the tourn; which may well be: and the reason is, that the lord has forfeited his leet for the time, *quoad* the particular object; it being very clear that, when the leet of a manor is by any means lost, the resiants owe suit to the tourn, and that although they should be within a hundred in the hands of a private person.

* *Mirror, passim. Finch's Law*, 248. See also *Kennet's P. A. p.* 319.

† 1. *Jones*, 283. 4. *Inst.* 265. *Scroggs*, 33. By 1. *Ja.* 1. *c.* 5. he is prohibited from taking to the value of 12*d.* for his own use, by colour of any grant of the profits of this court.

‡ 10. *H.* 6. 7.

§ 4. *Inst.* 263.

‖ 7. *H.* 6. 12. *b.* 10. *H.* 6. 7. *Dyer*, 233. *b.* 8. *Rep.* 38. *&c. Cro. Eliz.* 581. *Moore*, 470. *Ray.* 68.

¶ 21. *H.* 7. 32. *Cromp. J. P.* 130. *b. Owen*, 113.

** 7. *H.* 6. 12. *b.*

†† *Br. Leete*, 14. 24. This power must, however, be confined to those courts in which it is the usage to swear and discharge the jury in the course of the day, as the stranger is supposed to have no opportunity of marching off.

thrice, but most commonly twice, in the year; that is, within a month after Easter, and a month after Michaelmas *; and cannot, unless by adjournment, be held at any time not warranted by ancient usage. As to the place in which it is held, that, it has been said, may be any where within the precinct †; but, more strictly speaking, ought to be certain and accustomed ‡. Formerly, either for the convenience of the suitors, or from an excellent principle of the common law, that courts of justice should be as public as possible, it used to be held in the open air, upon a fair green, on the side of a hill, or under a large tree §. All persons above the age of twelve years, except peers, clerks, women, and aliens, resiant within the district, whether masters or servants, owe personal suit and attendance to this court, and ought to be here sworn to their fealty and allegiance ||; and here also, by immemorial usage and of common right, that most ancient consti-

* See *Magna Charta*, c. 35. *Br. Leete*, 23. 2. *Inst.* 72. 6. *H.* 7. 2. *Keilwey*, 148. *Br. Leete*, 21. 32. 1. *Roll. R.* 201. and 2. *Leo. pl.* 31.

† 8. *H.* 7. 3. *Br. Court Baron*, 8. *Owen*, 35.

‡ *Rastall's Entries*, 151.

§ Spelman *v. Mallobergium. Kennet's Parochial Antiquities. Glos. v. Franciplegium.* It is a curious illustration of the above principle, that the justices itinerant, in the time of Edward the first, sat at the stone cross (opposite the Bishop of Worcester's house, now Somerset Place) in the Strand. This venerable monument, which was even then ancient (*Pat.* 4. *E.* 2. *pl.* 2. *m.* 15. *d.*) is mentioned, by Stow, as standing headless in 1598. The justices, probably in bad weather, sometimes sat in the bishop's house; as the steward or bailiff of a leet would, for the same reason, occasionally do in the church, where, notwithstanding a canon (1. *Burn, E. L.* 361.), it is in many places still held.

|| 52. *H.* 3. *c.* 10. 2. *Inst.* 120, 121. *Britton*, c. 29. *Fleta*, *l.* 2. *c.* 52. 7. *E.* 2. 204. 8. *E.* 2. 276, 277. 12. *H.* 7. 15. *Br. Incidents*, 28. *Brownlow*, 185. *Mirror*, c. 1. § 17. *Keilwey*, 141.

tutional officer, the constable*, and, sometimes, by prescription, the mayor of a borough† are elected and sworn. The general jurisdiction of the court extends to all crimes, offences, and misdemeanors, at the common law, as well as to several others, which have been subjected to it by act of parliament. These are inquired after by a body of the suitors, elected, sworn, and charged for that purpose, who must not be less than twelve, nor more than twenty-three; and who, in some manors, continue in office for a whole year, while in others they are sworn and discharged in the course of the day. Whatever they find they present to the steward; who, if the offence be treason or felony, must return the presentment (in these cases called an indictment) to the king's justices; in all other cases, he has power, upon the complaint of any party grieved, or upon suspicion of the concealment of any offence, to cause an immediate inquiry into the truth of the matter by another jury. But the presentment being received, and the day passed, shall be held as true and sacred as the Gospel, and, unless it concern the party's freehold, shall not be shaken or questioned by any tribunal whatever‡. Upon every presentment of the jury, retained by the court, an

* 4. *Inst.* 265. 1. *Salk.* 175, *&c.*

† 11. *G.* 1. c. 4. How the mayor of a corporation comes to be elected in this court, by the burgage holders, suitors to the court baron, is a paradox which the editor is unable to solve.

‡ 10. *E.* 3. 5. 45. *E.* 3. 8. *Ass.* 442. *Barre*, 271. *Br. Leete*, 7. *Br. Presentments in Courts.* 1. 15. *Br. Traverse d'office*, 42. *Keilwey*, 66. 141. 19. *H.* 8. 11. *Dyer*, 13, *b. Finch, L.* 386. *Freeman*, 339. *Hale, P. C.* 153. 155. 2. *Keble*, 50. 3. *Keble*, 646. 1. *Hawk. P. C.* 217. 219. 2. *Hawk. P. C.* 60. 71. *Comb.* 76. *Wood's Inst.* 486. 4. *Black. Com.* 301.

amerciament * follows of course, which is afterward, in open court†, agreeable to Magna Charta‡, assessed by the *pares curiæ*, that is, the peers or equals of the delinquent, *affeered* or reduced to a certainty, or to a precise sum, by two or more suitors sworn to be impartial §. The amerciaments, thus ascertained, are then *estreated* (or extracted) from the roll or book in which the proceedings are recorded, and levyed by the bailiff, by distress and sale of the party's goods ||, by virtue of a warrant from the steward to that effect ¶; or may be recovered by other means **. This practice,

* That is judgment of amerciament; *Ideo in misericordia*, or *amerciatur*; therefore he is in mercy or amerced. We have no other than this equivocal term (mercy) to express the Latin word *misericordia:* but we use it in the same sense when we say, such a one is at another's mercy, though it is not supposed he will have any mercy upon him. *The king's mercy* is, in old statutes, frequently termed *grievous.*

† *Mirror*, c. 5. § 1.

‡ c. 14. See also *W.* 1. c. 6. And that these statutes were, in this particular, but an affirmation of the common law: see 8. *Rep.* 39. *b.* 2. *Inst.* 27.

§ *Mirror*, c. 5. § 1. *Br. Amerciament*, 50. *Keilwey*, 65. 8. *Rep.* 39. *Cro. Car.* 275. 2. *Keble*, 613. 1. *Salk.* 56. *Show.* 62. 3. *Lev.* 206. The old usage was for the affeerers to mark the sum, at which they assessed each person's amerciament, *super caput*, that is, immediately over his name. Many instances of this practice occur among the precedents in *Kitchen*, &c. But the modern and better method is to add, after the words "And therefore he is amerced," the following, "And his amerciament is affeered by M. N. and N. M. sworn affeerers thereof, at the sum of 6*s.* 8*d.*" as there is sometimes occasion to set forth the names of the affeerers in pleading.

|| *Br. Distresse*, 20. 40. 45. 72. 8. *Rep.* 41. *Sav.* 94.

¶ *Moore*, 574. 607. *Cro. Eliz.* 698. 748. *Carth.* 75.

** Fines and amerciaments, imposed at courts leet, of which the perquisites belong to the crown, are usually levied by process of *levari facias*, &c. from the exchequer (*Hard.* 471.); and those set at courts, of which the king is lord in right of his duchy of Lancaster, by a similar process out of the duchy

in substance at least, is of prodigious antiquity; and is, perhaps, the only perfect representation still extant of the criminal part of the constitution. Before the conquest, and probably for some time after, this court of the leet was, if not the sole, at least the most usual dispensary of criminal justice in the kingdom. No crime, in those remote ages, appears to have been punished by death, unless it were that of open theft, where the offender was taken with the *mainour*, that is, with the thing stolen upon him; and of this crime, and this only, the cognisance did not belong to the

court. Another remedy is by action of debt. *Keilwey*, 66. *Br. Leete*, 37. *Br. Ley Gager*, 99. *Br. Dette*, 179. *Rastall, Dette*, 151. *Bul. Ni. Pri.* 167.

Other punishments there are, which may be lawfully inflicted by the leet, in respect of the misdemeanors and offences there inquirable: as, the PILLORY and TUMBREL for *knavish bakers and brewers* (51. *H.* 3. *st.* 1. *st.* 6. *Rastall, Leet. Br. Quo War. Keilwey*, 139, *b. Kitchin*, 24. *Cro. Eliz.* 698. 13. *R.* 2. *st.* 1. *c.* 8.); the STOCKS* for *drunkards* (4. *J. c.* 5.); and the DUCKING (or cucking) STOOL† for *a common scold* (*Kitchin*, 43. 1. *Jones*, 283. 1. *Hawk. P. C.* 200). Nuisances likewise may be either abated by the proper officer, or made removable by the party, within a given time upon a pain (*Br. Leete*, 37. 2. *Keble*, 613. *Lane*, 51.) Forfeitures or penalties also, imposed by act of parliament upon offences inquirable in this court, are *ipso facto* incurred by the presentment, and require no affeerment; but must be recovered by action, or such other means as the act itself may prescribe.

For relief of the inquest, certain branches of their duty have been committed to the care of inferior officers; as, the

* The stocks, besides being the constable's prison, were anciently used for punishing offenders, of what description does not appear. *Rastell.* 425. *b. Kitchin*, 24. 43. And see 12. *R.* 2. *c.* 7. and 19. *H.* 7. *c.* 12. (now rep. or obs.) whereby beggars, vagabonds, &c. are to be set in the stocks.

† Sax. Scea'sing stol, i. e. diving stool. *Cucking* seems a ridiculous word made to express the imperfect utterance occasioned by immersion; *e. g.* cuc, cuc. Instead of a ducking-stool, they, in some places, make use of a curious iron machine, called *a scolding bridle.*

leet*. All other offences, of what nature or degree soever, subjected the party to a mulct or pecuniary fine, which was, in many cases, determinate and fixed. "For two hundred shillings," observes an ingenious writer, "you might have killed a peasant; for six times as much a nobleman; for six-and-thirty times as much, you might have killed the king. A king, in those days, was worth exactly 7,200 shillings†." This pecuniary composition, with respect to certain capital offences, was abrogated, and the punishment of death substituted in its place, by K. Henry I‡. How far

breach of assise, false weights and measures, unwholesome drink, &c. to the ALECONNERS*; corrupt victuals, to the FLESHTASTERS; and vagrancy, noctivagancy, disorderly houses, &c. to the CONSTABLE. These officers, therefore, are to return such offences to the court; upon which returns, the jury themselves must present the offenders; it being, in the words of an ancient writer, "an abuse to amerce any man by a presentment of less than twelve freemen sworn". *Mirror, c.* 5. § 1. See also 3. *Keble*, 362. It is however said, that presentments of constables at the sessions (and of course it is presumed in the leet) shall be as good and available as a presentment made by 12 men. *Fitz. J. P.* 6.

* The elucidation of this circumstance would form a curious if not an interesting article; but could not be easily compressed within the compass of a note; and, in fact, belongs more properly to a different work.

† Bentham's Introduction, p. clxxvi. It should be observed, however, that the king valued himself.

‡ Spelman v. *Felo.* *Wilkins, LL. Sax.* 304. In fact, there is an ordinance to this effect among the laws of Canute. William the conqueror, considering punishment by death as too lenient and merciful, ordered offenders to be mutilated: *eruantur oculi, et abscindantur pedes, vel testiculæ, vel manus, &c.* Neither does the law of Henry I. appear to have been invariably observed, if indeed it were not actually repealed. See Mr. Reeves's learned, accurate, and interesting History of the English Law, vol. 1. pp. 16. 33. 193. Glanville, after enumerating high treason, the concealment of treasure trove,

* From al and cunnere, Sax. *q. d. cervisiæ tentator.*

this alteration might affect the leet we are not now able to discover. But it is not improbable, that the distinction of *indictments* for felonies, and *presentments* of inferior offences, owes its origin to the above measure. It is still doubtful, however, what became of a person indicted at the leet for a capital offence, before the introduction of the petty jury (as it is now called) in the reign of Edward I. or Henry III.*; as it should seem, that, supposing an indictment, positively affirming such a one to have committed a capital crime, had been returned to the king's justices at the *iter* or jail delivery†, the punishment must have been awarded without further process, or any plea, traverse, or answer, from the party; of course, that they had nothing to do but to pronounce sentence of death: a presentment of any fact, upon the oath of twelve men judicially appointed to inquire thereof, being always conclusive by the ancient law; as indeed it is, in many cases, particularly with respect to offences of which the inquiry, as well as the punishment, still belongs to the leet, at this day. *Wilkins, LL. Sax. c.* 330. *Reeve's Hist. of the English Law*, i. 193. *Glanville, l.* 4. *cc* .1. 3.

It has been said, by Sir Edward Coke, and repeated by the noble judge already mentioned, that, by the

pleas of the king's peace broken, homicide, arson, robbery, rape, forgery, and the like, adds, which crimes are punished by death *(ultimo supplicio)* or mutilation *(membrorum truncatione)*. *l.* 1. *c.* 1.

* This second jury was originally, and for many years, considered merely as witnesses. See an excellent account of this institution in the valuable work just quoted.

† Dr. Hickes thought, that justices itinerant were originally instituted by Henry II. *Dis. Epis. p.* 8. 48. But Mr. Madox has produced evidence of their existence in the reign of King Stephen *(Hist. Ex. p.* 100*)*.

clause *Nullus vicecomes*, &c. in the Great Charter*, "the jurisdiction of the leet was abridged, its power to hear and determine taken away"; but it has been said and repeated, without due attention either to the nature and constitution of the court, or to the law of the time. No offence, it is well known, is at this day, or, for aught that appears, ever was, heard and determined in the leet, nor, before the period referred to, by any other criminal court in the kingdom, otherwise than upon the presentment of twelve men, or what we now, in most courts, call the grand jury. This presentment, as has been already observed, found and established the fact; and judgment, whether of *misericordia*, mutilation, or death, followed as an incident or matter of course, precisely, indeed, as the punishment does at this day on the verdict for the king of the petty

* No sheriff, constable, coroner, or other *our* bailiffs, shall hold pleas of our crown, *c.* 17. And, whether they did so, became an article of inquiry at the *Eyre*. And yet, in a writ issued in 18. *H.* 3. for the interpretation of another clause in this charter, it is expressly admitted, that pleas of the crown might be held at the hundred and wapentake courts, *nisi ita sit quod ad hundreda illa et wapentakia, fieri debet inquisitio* DE PLACITIS CORONÆ, *sicut de morte hominis, thesauro invento, et hujusmodi.*" *Prynne's Animadversions*, 190. In short, it is very well known, that both sheriff and coroner have held pleas of the crown ever since the granting of the great charter, and do so at this day. It appears, however, from Glanville, that the crime of theft, at that time, belonged wholly to the sheriff, and was to be pleaded and determined in the *county court*. And that he had also cognisance of medleys (or affrays), batteries, and wounds, unless where the addition was made of the king's peace broken. *(l.* 1. *c.* 1. *l.* 4. *c.* 8.*)* These, therefore, one might think, were the pleas of the crown taken away by *Magna Charta*; that is, the criminal jurisdiction of the county court; if it did not appear, both from *Fleta (l.* 1. *c.* 47.*)* and *Hengham (Magna, c.* 2.*)*, that such sort of pleas were still held by the sheriff. In any case it is nothing to the leet.

jury. In fact, therefore, the jurisdiction of the leet was not in the least abridged or affected by that charter; nor is it at all probable, that the barons would either seek or suffer the diminution of their own priviliges, of which, on the contrary, there is an express saving.

That this court has no power to inquire of the death of a man, or of rape*, is a more ancient, but not less erroneous, opinion. The contrary is most directly and expressly held in the *Statutum Walliæ*, in Britton, Fleta, the Mirror, and the statute (or whatever it is) of 18. *Ed.* 2. all much older and better authorities than the book of Assises†, in which that opinion first appears. If, indeed, the reason of the exception be, that the inquiry of these two crimes belonged properly to the coroner, it may be readily admitted without impeaching the jurisdiction of the leet. The coroner took cognisance of death, *super visum corporis*, and of rape, as well as other offences, by appeal only. It follows, therefore, that in every instance, either where he could not, or did not, act, the inquiry must be in the leet; otherwise the offender should have escaped without punishment, which would be absurd. They

* *Lete et Hundr.* 10. *Br. Leete*, 22.

† 41. *E.* 3. *pl.* 30. A doubt is suggested in 9. *H.* 6. 44. whether the leet can inquire of high treason, and an opinion given in *Br. Ley Gager*, 99. against its power; but this, as my lord Coke observes on a similar occasion, happened "for want of the knowledge of antiquity". See 2. *Inst.* 72. It is a no less extraordinary *dictum* in *Dyer*, 233, *b.* that an indictment of assault and battery, found in the leet, *without bloodshed*, is void: the principal case being a *fine* for an assault, *in disturbance and contempt of the court.* He might possibly allude to the book case of 8. *E.* 4. 5. which by no means supports his doctrine, as the plaintiff, whose counsel makes that allegation, took nothing by his writ.

who suppose rape, as a *felony*, to be excepted, because it has been made so by act of parliament, and allow it to be inquired of as a trespass*, seem to have forgot that it is a trespass by act of parliament†, and a felony at common law‡; they should have also recollected the general rule, that where a trespass is by statute turned into felony the trespass is merged §.

It is indeed unaccountable, how such groundless assertions come to be made. There is no point better settled, than that the steward of a leet may award to prison persons either indicted or accused of felony before him, or guilty of any contempt in the face of the court. And yet lord Coke has not hesitated to assert, that the leet, though a court of record, hath no power to imprison ‖: an assertion in which he is positively contradicted by every authority ancient or modern ¶. These errors are probably owing to the imperfect knowledge judges and lawyers are content to acquire

* *Tourne de Viscount.* 5. *Lete et Hundr.* 3. *Br. Leete*, 26. *&c. &c.*

† *W.* 1. *(3. E.* 1.*) c.* 13.

‡ *Vide* the following summary in the margin.

§ *Buller's Nisi Prius*, 32. If, indeed, the statute of *W.* 1. operated as an alteration of the common law, and was not virtually repealed by that of *W.* 2. *(13. E.* 1. *st.* 1.*) c.* 34, it would seem to follow that rape cannot be inquired of at all in the leet, either as felony or trespass.

‖ 11. *Rep.* 43. *b.* 1. *Roll. Rep.* 35. 74.

¶ *W.* 2. *c.* 13. 13. *H.* 4. 12. 10. *H.* 6. 7. 21. *H.* 7. 32. *Cromp. J. P.* 92. *b. Owen*, 113. Possibly, however, lord Coke meant to confine the disability of imprisoning to offences presented and punishable in the leet; which (except in the case of bakers, &c.) can only be punished by amerciament: the reason whereof is, that this court was established long before imprisonment was adopted as a mode of punishment. And, indeed, how far any other court was authorised to inflict it, by the common law, might have been once a question.

upon certain unprofitable subjects. "From Magna Charta to this time," says the late illustrious chief, courts leet "have been *always abridged, never enlarged**." It is an incontestible fact, that the jurisdiction of the leet has been *enlarged by several statutes*, and was *never abridged by one* †.

IV. Though the leet, from being the principal criminal court in the kingdom, is now considered as the lowest, the greater part of its business having been transferred to other more extended jurisdictions, yet it must not be supposed, that the power and authority of the court is thereby diminished and gone. On the contrary, there is no offence which it ever did or could inquire of and punish, which it may not equally inquire of and punish at this day. That the tourn and the leet have been so long in a declining way, is not, however, at all owing to the cause referred to by a learned writer ‡; *i. e.* the discharge, granted by the statute of Marlbridge (in which, by the way, the leet is not mentioned) to all prelates, peers, and clergymen, from their attendance on these courts; since the county court and court baron, which they are still compellable to attend (at least by attorney), are scarcely in a more flourishing condition. Neither is it perfectly clear, that "experience has shewn the wisdom of widening the circle of both civil and cri-

* 3. *Burr.* 1864.

† It was the same great character who decided, in opposition to the united authority of ages, or rather to the law itself, that a presentment, in the leet, of a common offence, is liable to be traversed. But, in short, it seems to have been the leading principle of his long life, and continuance on the bench, to unsettle that law, of which the chief, and too often the only, merit is its certainty.

‡ 4. *Black. Com.* 274.

minal jurisdiction*". Changes may be for the worse, as well as for the better. True it is, that the business of the leet hath, for the most part, gradually devolved upon the quarter sessions†; but many reasons may be given for this circumstance, much more plausible than those already mentioned. In the first place, the increased population, and more commercial turn of the country, and the consequent increase of offenders and offences, required the dispensaries of justice to be, if not always, at least frequently, open: whereas the leet is seldom held more than twice, and sometimes but once, in the year; though it may certainly be kept open, by adjournment, from month to month, from week to week, or even from day to day. Secondly, the jurisdiction of this court is, upon whatever principle, confined to offences at the common law, which are become less numerous than those created by act of parliament. A third reason may be, the steward of a leet seldom resides upon the spot; justices of peace, on the contrary, are every where to be met with, and by keeping, in a manner, open shop, make their profession and powers familiar to the people, who love to buy law, one would think, as they do any other commodity. The learned commentator is therefore in the right, where he reckons "the almost entire disuse and contempt of the court leet and sheriff's tourn, the king's ancient courts of common law, formerly," he observes, "much revered and respected," among the mischievous effects of the change in the administration of justice, by summary proceedings before justices of the peace‡.

* 3. *Burr.* 1864.
† 4. *Black. Com.* 274.
‡ 4. *Black. Com.* 281.

To the circumstances already noticed may be added the practice adopted in the quarter sessions, and other superior courts, of allowing and trying a traverse to the grand jury's presentment; a proceeding to which, whether it be good or bad, the primitive constitution of the country is an utter and total stranger. The proceedings in the leet are without expense, the suitor pays no fees, and advocates or attorneys of course never enter it.

The peculiar excellence of this most ancient and respectable tribunal is, that it does what is usually called every body's business, and nobody's business. The jurors are to inquire of such offences or disorders as may happen within their own neighbourhood, under their own observation; in order that, if they cannot be avoided by timely interference, an adequate penalty may prevent their repetition. They are to be themselves vigilant; to see with their own eyes; to hear with their own ears; and, if the evidence of others should, as it may sometimes, in offences already committed, happen to be necessary, to receive it impartially*.

* Much of this can only be understood of those courts in which it is the custom to swear the jury in for the year: where they are discharged the same day, it should seem necessary for them to proceed chiefly upon evidence; and indeed there is generally, if not always, a proclamation for that purpose.

THE

COURT LEET.

CHAP. I.

OF THE NATURE OF THE LEET.

A leet is a court of record. 1. *Roll Rep.* 73. 8. *Rep.* 38, *b**.

The leet is the court of the King, for the time. 10. *H.* 6. 7.

Leet is the King's court, held in his name, notwithstanding that another has the profits. 12. *H.* 7. 17.

A leet was once one of the greatest courts the King had, but at present it is only a shadow of it. 1. *Roll Rep.* 73.

The tourn and the leet (derived out of it) were anciently the principal courts of criminal jurisdiction. 3. *Bur.* 1860.

* The reason wherefore these courts of the tourn and leet are courts of record, and not the courts of the county, of the hundred, and of the court baron, is, for that the tourn and the leet are instituted for the common-weal—as for conservation of the king's peace, and punishment of common nuisances, &c. 4. *Inst.* 263.

III. The leet is a court of record for the cognisance of criminal matters, or pleas of the crown, and necessarily belongs to the king; though a subject, usually the lord of a manor, may be and is entitled to the profits, consisting of the essoign pence, fines, and amerciaments. It is held before the steward (or was, in ancient times, before the bailiff)* of the lord; that is, of the person entitled to the perquisites of court, whether king or subject. This officer, who should be a barister of learning and ability†, is a judge of record ‡, may take recognizance of the peace §, may fine ‖, imprison ¶, and, in a word, "as to things to which his power extends, hath equal power with the justices of the bench**". In one instance, at least, perhaps, he has even more; for, if he should be in want of jurors, he may compel a stranger, who is riding along the highway, to alight and be sworn††. It is held sometimes once, sometimes

the manor. See 4. *Inst.* 261. It is indeed repeatedly said, in our old books, that things, of which the leet (of a manor, that is) omits to inquire, shall be inquired of in the tourn; which may well be: and the reason is, that the lord has forfeited his leet for the time, *quoad* the particular object; it being very clear that, when the leet of a manor is by any means lost, the resiants owe suit to the tourn, and that although they should be within a hundred in the hands of a private person.

* *Mirror, passim. Finch's Law,* 248. See also *Kennet's P. A. p.* 319.

† 1. *Jones,* 283. 4. *Inst.* 265. *Scroggs,* 33. By 1. *Ja.* 1. *c.* 5. he is prohibited from taking to the value of 12*d.* for his own use, by colour of any grant of the profits of this court.

‡ 10. *H.* 6. 7.

§ 4. *Inst.* 263.

‖ 7. *H.* 6. 12. *b.* 10. *H.* 6. 7. *Dyer,* 233. *b.* 8. *Rep.* 38. *&c. Cro. Eliz.* 581. *Moore,* 470. *Ray.* 68.

¶ 21. *H.* 7. 32. *Cromp. J. P.* 130. *b. Owen,* 113.

** 7. *H.* 6. 12. *b.*

†† *Br. Leete,* 14. 24. This power must, however, be confined to those courts in which it is the usage to swear and discharge the jury in the course of the day, as the stranger is supposed to have no opportunity of marching off.

thrice, but most commonly twice, in the year; that is, within a month after Easter, and a month after Michaelmas *; and cannot, unless by adjournment, be held at any time not warranted by ancient usage. As to the place in which it is held, that, it has been said, may be any where within the precinct †; but, more strictly speaking, ought to be certain and accustomed ‡. Formerly, either for the convenience of the suitors, or from an excellent principle of the common law, that courts of justice should be as public as possible, it used to be held in the open air, upon a fair green, on the side of a hill, or under a large tree §. All persons above the age of twelve years, except peers, clerks, women, and aliens, resiant within the district, whether masters or servants, owe personal suit and attendance to this court, and ought to be here sworn to their fealty and allegiance ‖; and here also, by immemorial usage and of common right, that most ancient consti-

* See *Magna Charta*, c. 35. *Br. Leete*, 23. 2. *Inst.* 72. 6. *H.* 7. 2. *Keilwey*, 148. *Br. Leete*, 21. 32. 1. *Roll. R.* 201. and 2. *Leo. pl.* 31.

† 8. *H.* 7. 3. *Br. Court Baron*, 8. *Owen*, 35.

‡ *Rastall's Entries*, 151.

§ Spelman *v. Mallobergium. Kennet's Parochial Antiquities. Glos. v. Franciplegium.* It is a curious illustration of the above principle, that the justices itinerant, in the time of Edward the first, sat at the stone cross (opposite the Bishop of Worcester's house, now Somerset Place) in the Strand. This venerable monument, which was even then ancient (*Pat.* 4. *E.* 2. *pl.* 2. *m.* 15. *d.*) is mentioned, by Stow, as standing headless in 1598. The justices, probably in bad weather, sometimes sat in the bishop's house; as the steward or bailiff of a leet would, for the same reason, occasionally do in the church, where, notwithstanding a canon (1. *Burn, E. L.* 361.), it is in many places still held.

‖ 52. *H.* 3. *c.* 10. 2. *Inst.* 120, 121. *Britton*, c. 29. *Fleta*, *l.* 2. *c.* 52. 7. *E.* 2. 204. 8. *E.* 2. 276, 277. 12. *H.* 7. 15. *Br. Incidents*, 28. *Brownlow*, 185. *Mirror*, c. 1. § 17. *Keilwey*, 141.

CHAP. II.

OF THE LORD OF THE LEET.

When the King grants a man a leet, he has only the amerciaments, and the day belongs to the King, *viz.* the court: and so observe, that the King hath the court, and the grantee the profits. 41. *E.* 3. 26. *Br. Leete*, 4.

The day of the leet is to the King, and the lord is but the officer of the King. 44. *E.* 3. 19. *Br. Leete*, 5.

Every man that hath view or market ought to have pillory and tumbrel; and, if he fail, he shall be fined to the King for the trespass. *Keilwey, (Cases, &c. E.* 3.) 149, *b.*

The lord of a manor and leet is to find tumbrel and stocks; and, if he do not, he is to forfeit his liberty for the neglect. *Moore*, 574. *(Sed vide* 607. and *Cro. Eliz.* 698. S. C. where it is pillory and tumbrel; stocks not being mentioned. *Quod nota*.)*

* Pillory and tumbrel cannot be by reason of a manor, but are appendant to the leet; without which, right cannot be done to persons within the view. *Keilwey*, 139, *b.* 140, *b.* But the case of stocks is another business; for stocks, originally, were not to punish, but to keep men in hold, &c. *Carter*, 29. And it is noted, by *Kitchen*, that every one, that hath view of frankpledge, ought to have a pillory and tumbrel to execute justice; and also in every town, or in the leet, [there ought to be] a pair of stocks; and, for lack of them, the town shall forfeit five pounds, and it is inquirable. 24 (Q. his authority). But see, in *Rastall's Entries*, under the title *Leet*, a declaration in an action upon the case by an abbess, where she

If a lord, who hath franchise of leet, do not inquire of things inquirable, and punish them at his leet, the sheriff, for default of the lord, shall inquire in his tourn, and shall make punishment there; and, if the sheriff do it not in his tourn, the King's Bench * shall inquire of it, when it comes [into the county]; or, otherwise, it shall be inquired by the justices in eyre. *M.* 10. *H.* 4. (4.) *Fitz. Lete et Hundr.* 13. Default.

If a man have leet, and may inquire of felons, and have suspected persons, he may not deliver them; but the justices of deliverance shall do it. 8. *H.* 4. 18. *Br. Fraunches et Liberties,* 5. and *Leete,* 11. Goal delivery.

The lord of the leet hath power to try waif by inquest, and the lord of the hundred not. [For] waif does not belong to the lord of the hundred, by the hundred, but to the King by the leet; and the lord of the hundred cannot try by jury in the hundred, for he cannot compel them to be sworn; *e. contra* in leet, there he may swear them. 44. *E.* 3. 19. *Br. Leete,* 5. Waif.

If a man come into my leet, and make affray, by hue and cry raised, or bloodshed, and have nothing within the leet; there, if he be not taken, and afterward this is presented at the leet, all the deziners shall be amerced. 50. *E.* 3. 5. *Br. Leete,* 9. Deziners amerced.

Where lord of a leet offends in hue or cry, or such like, within his own leet, the lord of the hundred cannot punish him [in the leet of the hundred]; but it Punished.

claims *(inter alia)* "*Pillorium et Tumbrell', stompa et cippos ad puniend' transgressores.*"

Then, for the leet, Mr. Attorney desired that it might be inquired—if he have those things which are for the execution of justice, as pillory and *stocks,* and cucking-stool, &c. All these are causes of seizure, &c. 1. *Jones,* 283.

* So, rightly, in the book; it is *baile* instead of *bank,* in *Fitz.*

shall remain until the eyre, and there he shall be justified. 21. *E.* 3. 3. 4. *Br. Leete*, 13.

If a man disturbs my steward in holding my leet, an action upon the case lies against him. 38. *H.* 6. 16. 19. *R.* 2. *Action sur le case.* 52. *Br. Action, sur le case. pl.* 75. *Rol. A.*

Neither the lord in the leet, nor his court, can amerce a man for trespass made to the lord, and yet by custom it is good; and, if the lord levy the amerciament, it is good bar in trespass, although there be no such custom. 12. *H.* 4. 8. *Br. Leete*, 12.

A man shall not be amerced in a leet, for a trespass to the lord himself; for he shall not be his own judge. 12. *H.* 4. 8. *b.* 1. *Roll Abr.* 211*.

But he may be amerced for non-payment of the *certum letæ* to the lord, be being a desiner. 13. *H.* 4. 9. 1 *Roll. Abr.* 211.

A leet cannot amerce for things done to the damage of the lord. *Raym.* 160.

Trees in the highway.

If trees be growing in the King's highway, the lord of the leet shall have the trees. 27. *H.* 6. 8. *Tamen, vide Br. Leete*, 3.

Lord of the wastes.

If one be lord of a vill, and another hath the leet, and the lord not; where he who hath the leet view of frankpledge hath no lands or tenements, but the leet, and by cause of the leet he claims to be lord of the wastes, in the said vill, by prescription; this claim is merely void. 9. *H.* 6. 44.

Every one who hath leet shall have the punishment of common nuisances, as hedges, ditches, and such like,

* *Quære*, with what propriety the lord can be paid to be his own judge; as he neither does nor can sit as such in the leet. This is not the reason.

and in waste places, although he hath no land in the vill; but if he claim surcharge, and such like, made in the waste, it is void. 9. *H.* 6. 44. *Br. Leete.* 2.

Leet to one, yet the amerciaments upon his tenants may be to another. 13. *E.* 2. 404, 405.

Compellable to hold a court.

Writ shall be directed to the lord of the manor, commanding him to hold a court; by which justice may be done to his tenants. 2. *Roll Rep.* 107.

One is indictable for setting up a leet. 1st. Because it is an usurpation upon the Queen, for which she may bring a Quo Warranto; where there may be two judgments—the one for seizure of the franchise into her hands, and the other for a fine for the usurpation. 2ndly, To keep a leet to summon the subjects to make presentments, and to amerce, is a grievance to the people besides. 6. *Mod.* 183.

CHAP. III.

OF THE ORIGIN AND ANTIQUITY OF THE LEET.

The leet is the most ancient court in the land. 7. *H.* 6. 12. *b.*

A leet is one of the most ancient courts, of which the common law takes notice, for criminal cases. 1. *Roll Rep.* 73.

King Alfred. The tourns of sheriffs and views of frankpledge were ordained [by King Alfred]. *Mirror.* c. 1. §. 3.

The leet was constituted by the monarch of the Saxons. 1. *Roll Rep.* 73.

Sheriff's tourn. Leet was derived from the sheriff's tourn: for, at first, the sheriff had the governance of the county; and, for the governance thereof, had two powers---the one of holding pleas, under forty shillings, in his county court; and for reforming nuisances, and such like, which belong to the tourn or leet, the tourn was granted to him; and, afterwards, by the multitude of people, and for their ease, leets were derived from the sheriff's tourn, as hundreds were derived out of the county court. 12. *H.* 7. 15. *Br. Leete.* 24.

At the first, all leets in England were derived out of the sheriff's tourn by grants of kings. *Keilwey*, 67.

Of ancient time the sheriff had two great courts, *viz.* the tourn and the county court: afterwards, for the ease of the people, and especially of the husbandmen, that each of them might the better follow their business in their several degrees, view of frankpledge or leet was by the King divided, and derived from the

tourn, and granted to the lords to have the view of the tenants and resiants within their manors, &c. So as the tenants and resiants should have the same justice, that they had before in the tourn, done unto them at their own doors, without any charge or loss of time; and for that cause came the duty in many leets to the lord *de certo letæ*, towards the charge of obtaining the grant of the said leet. 2. *Inst.* 71.

The *tourn* and the *leet* (derived out of it) are coeval with the establishment of the Saxons here; there are no traces of them either amongst the Romans or Britons; but the activity of those courts is marked very visibly both amongst the Saxons and the Danes. 3. *Bur.* 1860.

CHAP. IV.

OF THE TIME, PLACE, AND MANNER OF HOLDING THE LEET.

By *Mag. Char.* c. 35. No sheriff, or his bailiff *, shall keep his tourn in the hundred but twice in the year; and, no where, but in due place and accustomed; that is to say, once after Easter, and again after the feast of St. Michael. And the view of frankpledge shall then be at the same term of St. Michael, without occasion [molestation]. So that every one have his liberties,

* *Nec aliquis Vicecomes vel Ballivus suus*, &c. The exemplar of the G. C. in the dean and chapter's library, Durham, omits *suus*.

which he had, or used to have, in the time of K. Henry, the King's grandfather, or which he hath purchased since.

This clause is to be understood of the leet of the tourn, and not of other leets. 24. *H.* 8. *Br. Leete*, 23. 2. *Inst.* 72*.

By 31. *E.* 3. *st.* 1. *c.* 15. Every sheriff shall make his tourn yearly: one time, within the month after Easter, and another time, within the month after St. Michael; and, if they hold it in other manner, they shall lose their tourn for the time †.

The sheriff ought to hold his tourn twice in the year, *viz.* within the month after the feast of Easter, and within the month ‡ after the feast of St. Michael: and, if he hold it in other manner, it is void, and without warrant, &c. by the statute (by all the justices). *M.* 38. *H.* 6. (7.) *Fitz. Tourne de Vicount*, 2.

The sheriff, before the statute, might have held as many tourns as he would, to the grievance of the peo-

* The *Mirror* considers, as falling into the offence of larceny, all those who oftener than twice in the year hold sheriff's tourns; or who, oftener than once in the year, hold views of frankpledge in one court. *C.* 1. §. 10.

† The reason of enforcing this regulation is, in the preamble, alledged to be, that divers of the commons had grievously complained, that some sheriffs made their tourns oftentimes in lent, when men ought to attend to devotion and other works of charity, for the good of their souls; and sometimes after the gule of August*, when every man almost was occupied about the cutting and entering of his corn, whereby the people were much grieved and disquieted.

‡ It was agreed, by all the court, that in case of a leet held within a month after Easter and Michaelmas, it shall be accounted 28 days. *Cro. J.* 167.

* The gule of August is the feast of St. Peter, *ad vincula*, or first of August.

ple; and the statute was to restrain him, that the people should not be disturbed from their prayers in lent, nor from harvest labour. And, it was admitted, that the leet of another lord is not in the case of the statute, but the leet of the tourn. 6. *H.* 7. 2. *Br. Leete.* 21.

Leet cannot be held but once a-year, *viz.* at the feast of St. Michael, by the statute of *Magna Charta*; which limits *quod visus franchiplegii fiat ad eundem terminum Sancti Michaelis.* T. 8. *H.* 7. (3.) *Fitz. Lete et Hundr.* 4,

It cannot be held on a Sunday, nor beyond a month after Michaelmas. 2. *Saund.* 291. 1. *Vent.* 107.

A man may prescribe to hold a leet oftener than twice a-year; and at other days than are set forth in the statute of *Magna Charta, cap.* 35. because the said statute is in the affirmative*. 2. *Leon. pl.* 31. Prescription.

If a statute in the negative be declarative of the ancient law, that is, in affirmance of the common law, there as well as a man may prescribe, or alledge a custom against the common law, so a man may do against such a statute. As the statute of *Magna Charta* provideth, that no leet shall be holden but twice in the year, yet a man may prescribe to hold it oftener and at other times, for that the statute was but in affirmance of the common law. *Co. Lit.* 115. See also 1. *Jones*, 289, 290. and 2. *Bulstr.* 36. and *Co. Lit.* (new edition) 116 *b. n.* 10, 11, 12.

Leet may be held by prescription, at any time of the year. 1. *Roll Rep.* 201.

* But, unless that prescription appear, it shall not be presumed. 11. *Mod.* 228. Q. v. *Jennings.*

A third leet was sometimes held at the feast of S. Hilary. See 11. *H.* 4. 89. and *Gilbert's Exchequer Reports*, 209.

Charter. Prescription. He that claims a leet, by charter, must hold it on the same days which are contained in the charter; and he that claims it by prescription, may claim to hold it once or twice every year, at any such days as shall, upon reasonable warning, be appointed, if the usage hath been so, so that it hath been kept at uncertain times; or else it ought to be kept at such certain days and times, as by prescription hath been certainly used. 2. *Inst.* 72.

Day certain. If the leet have been used to be held at a day certain, and the lord hold it at another day, it is void; for no one hath leet, unless by grant or prescription; and if he have it by grant, he cannot vary the day in his patent; and if he have it by prescription, he cannot vary the day accustomed. 38. *H.* 6. 7. *Fitz. Lete et Hundr.* 2. *Br. Leete*, 32.

Usage of the country. Views may be held according to the usage of the country: for, in some countries, they hold their views once a-year, and in some countries from six weeks to six weeks. (By *Scrope. t. E.* 3.) *Keilwey*, 148.

Leet may be held in any place, within the precinct, where the lord shall please*. 8. *H.* 7. 3. *Br. Court baron.* 8.

A leet may be held in any place within the liberty and franchise; and, although no court hath, time out of mind, been holden within the manor, it is not there-

* Court baron, on the contrary, shall be held in one place certain. 8. *H.* 7. 3. *Br. Court Baron.* 8. *Tamen Q. and vide Dal.* 61. 1. *Inst.* 58. 4. *Rep.* 26. *b.* 27. *Owen.* 35.

In Rastall's Entries, *Det sur amercement en Lete, fo.* 151. the language is, that the court was held "*infra precinctum, in loco ubi curia antea teneri consuevit more solito et debito.*"

by lost, for it is incident to a manor of common right. *Owen*, 35*.

By *Can.* 88, the church-wardens or questmen, and their assistants, shall suffer no temporal courts, leets, or lay-juries, to be kept in the church, chapel, or church-yard. 1. *Burn, E. L.* 361. But, Church, chapel, or church-yard.

Quære, how far this canon is subversive of any prescription, or ancient custom, to hold the leet in the church, chapel, or church-yard? It is very certain, that, notwithstanding this injunction, the court leet is in some manors held in the church or chapel at this day†.

In ancient leets personal notice (of time and place, &c.) perhaps is not necessary; but notice in the church and market may be well; otherwise, where it is not an ancient leet. 11. *Mod.* 76. Notice.

The common warning in leet is for three or four days before the leet; and if, by prescription, they ought to be warned fifteen days, and are not, they may not disturb the holding of the leet, unless by prescription. And the tenants shall not be charged with any amerciament, assessed at such leet, without the accustomed warning. 38. *H.* 6. 16.

* Every manor hath court baron incident*, but not leet, unless in special case. 34. *H.* 6. 49. 8. *H.* 7. 3.

Leet or law-day is not incident to every manor, but to those only, which, by special grant, or long prescription, have such liberty. *Commonwealth of England*, 156.

† By the synod of Exon. 1287. c. xiii. *Ne in ecclesiis vel coemeteriis earum mercata vel* placita secularia *teneantur.* Concilia Magnæ Britanniæ. ii. 140.

* It hath been doubted whether a manor, quatenus a manor, has a court baron to hold pleas; it is true it has, *eo nomine*, a court baron *to have suit*, but doubted whether to *hold plea without prescription*. 12. *Mod.* 494.

Stile. The stile of this court of the leet is *curia visus franc.' pleg.'* tent' apud B. coram H. B. Seneschallo.* &c. 4. *Inst.* 265.

CHAP. V.

OF THE SUITORS†.

By *Stat. de Marleberge.* 52. *H.* 3. *c.* 10. Archbishops, bishops, abbots, priors, earls, barons, nor any religious men, nor women, need to come to the sheriff's tourns; unless their presence be for some cause especially required. And they, who have tenements in different hundreds, shall not be under the necessity to come to such tourns, unless in the bailiwicks where they be conversant.

This act extendeth to all leets and views of frankpledge. 2. *Inst.* 121.

* Rather *curia leta et visus*, or *cum visu franc' pleg'*. &c.

† By *Stat. de Merton.* 20. *H.* 3. *c.* 10. Every freeman which oweth suit to the county, tithing, hundred, and wapentake, or to the court of his lord, may freely make his attorney to do these suits for him.

But this statute extends, not to suit real (that is, in respect of his resiance to a leet or tourn), because he cannot be within two leets. 2. *Inst.*

By *Stat. de Marleberge.* 52. *H.* 3. *c.* 2. None shall distrain any to come to his court who is not of his fee; or over whom he hath not some jurisdiction by reason of his hundred or bailiwick. But

This is intended of suit service, in respect of a seignory, and not of suit real in respect of resiance. 2. *Inst.* 104.

Suit service cannot be to a view of frankpledge; for this shall be suit real and not suit service. 12. *H.* 7. 15.

Before the making of this statute, the sheriff in his tourn, and the lords of leets, did use to amerce archbishops, bishops, priors, earls, barons, religious men, and women, if they came not to the tourns, or to the leets of others; because, for suit real, no distress can be taken, but for the amerciaments for default of suit, which this act doth remedy; for now, seeing it is hereby provided that the persons above named shall not need to come to tourns, &c. therefore, for their not coming, they cannot be amerced. 2. *Inst.* 120.

And it is worthy of observation, that, by the common law, parsons of churches, that had *curam animarum*, the better to perform their function, were not compellable to come to tourns or leets, &c. *Ibid.* 121.

To the tourn [or leet] all the freemen of the hundred [or manor] and other terre-tenants, at the [usual] summons*, commonly ought to come, except clerks, those of religion, and women. *Britton. c.* 29†.

Those also of twelve years or more [are to come], except earls, prelates, barons, people of religion, and women, and except all those who are not conversant and continually resident in the hundred [or manor]. *Britton. c.* 29.

All of twelve years and upward ought to come. *Fleta. l.* 2. *c.* 52.

The law of the leet is, that every one, who hath been resident a year and a day, shall come to the leet. 7. *E.* 2. 204. 8. *E.* 2. 276. 277.

* *A cele somounse;* but no summons has been mentioned.

† To which tourn, all freeholders, and others holding land, and in that commote resident in the time of the summons of holding the tourn, except religious [persons] clerks and women, ought there to come. *Stat. Wal.*

Suit to the leet is not due by reason of soil, but resiance of the person; and it is said, that the lord cannot discharge it. 7. *E.* 2. 204.

Suit of court is inseparably incident to a court leet, which cannot be released. *Brownlow.* 185. *(Viner Rel. G.* 14.*)*

A man cannot dispense with suit to the leet, unless by special words. *Br. Incidents, pl.* 28. cites 8. *E.* 2.

Suit to the leet is suit real, (i. e. royal) and not suit service*; for which he shall be amerced and not distrained. For to a leet the nature of the suit is real; because that this is the King's court, and so the suit shall be real as the court is real. 12. *H.* 7. 15.

Every man shall be in some leet; and that by reason of resiancy, as well the servant as the master, and all others. *H.* 2. *H.* 4. (16.) *Fitz. Lete et Hundr.* 5. See also 18. *H.* 6. 12.

The rule is, that every man ought to be within a leet, and none can be of two leets. *Cro. Jac.* 584.

A man cannot be compelled to come to two leets, by reason of his resiancy. *T.* 18. *H.* 6. [13.] *Fitz. Lete et Hundr.* 1.

If a man hath a house within two leets, he shall be taken to be conversant where his bed is. 2. *Inst.* 122.

If a man hath a house and family in two hundreds, so as he is in law conversant or commorant in both, he shall do his suit to the tourn or leet where his person is commorant. 2. *Inst.* 122.

* But, where non-resiant is bound by tenure to make such service as others make, in presenting the defaults of misfeasors, &c. this shall be suit service, and not suit real; for he shall not be sworn to his allegiance, &c. (by Fineux.) 12. *H.* 7. 18.

When one is distrained* for suit to the leet, and doth not owe suit, or is exempt, &c. he may have a writ out of Chancery, *pro exoneratione sectæ ad curiam. Vide F. N. B.* 158.

At these views of tourns, and of frankpledges †, es- Essoigns. soigns are holden, by which the absence of those who cannot be there is excusable; and such essoigns are adjournable to the courts next following, that the essoigners have their warrants. *Mirror, c.* 1. § 17.

Tenants in antient demesne shall not be bound to come to the leet or tourn of the sheriff. *Br. Leet.* 38. cites the *Register*, but says, *quære* of leet.

An attorney cannot be amerced for not doing suit to his lord's court, at such time as his attendance is required at Westminster, *per Keyling.* 1. *Ventris*, 29. quære, if this be intended of the leet. See also 16.

* A man is distrained for suit to the court baron; but not for suit to the leet, for there he is to be presented and amerced. See 12. *H.* 7. 15. (before.) 2. *Inst.* 120. (before.) See also *Moore*, 88. *Lukin* v. *Eve*, where in replevin defendant awows for amerciament in his leet, upon plaintiff, for not appearing, being warned; plaintiff pleads non-residence within the precinct, upon which the issue joined, and found against him, and defendant has return *avenorum* and his damages.

† In the original *Al cestes viewes d'tornes & de viewes.*

CHAP. VI.

OF THE JURISDICTION OF THE LEET.

Fealty.

It was ordained [by King Alfred] that none of the age of 14 years or more was to be received in the realm, beyond 40 days, except men passing to fairs, pilgrims, and messengers, if he were not first plevyed of freemen, and sworn to the king by oath of fealty, and afterward received into a decennary. *Mirror, c.* 1. § 3.

If any one proffer himself to swear fealty to the king, let him be first plevyed of some frankpledge, and put in dozein, and afterwards swear fealty to the king; and then let him be forbidden to offend and common with offenders; and let him be enjoined that he be obedient to his chief pledge. *Mirror, c.* 1. § 17.

To take this oath, in these views, is none exempt who is of the age of 12 years, man or woman*, clerk

* Women are not sworn in leets or tourns, as men which be of the age of 12 years or more be, and therefore men may be called *ut lagati, id est, extra legem positi,* but women are, *waviatæ, id est, derelictæ,* left out or not regarded, because they were not sworn to the law. *Co. Lit.* 122. *b.*

A minor, says Bracton, and who shall be within the age of 12 years, cannot be outlawed, nor put out of the law, because, before such age, he is not under any law, nor in *decenna,* no more than a woman, who cannot be outlawed, because she is not under the law. *i. Inlaughe,* English. *s.* in frankpledge or decenna, as a male of 12 years and upward, and, therefore, she cannot be outlawed; waived indeed she may well be,

[England]

[Engl(and.)]

(Charles the Second.)

Among the State Tracts, privately printed in the reign of Charles II, and collected in 1689, there is a Letter from a Parliament man to his Friend, which, at the time was attributed to Andrew Marvell, and as is now said, * "judging by its style and sentiments, with good reason." - It describes the House in 1675 as "a wise Parliament," composed of four parties; Old Cavaliers, Old Roundheads, Indifferent Courtiers, and True Country Gentlemen: the two last pretty nearly matched; the two first comparatively small in number, but inspired with such abiter hatred of each other, that, by dexterous management of their animosities, the Court-party was able generally to secure a majority. The old Cavaliers, "grown aged, and almost out of sight", was "damnable godly", and all for

* Cornhill Magazine for June 1869, p. 722.

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If all be [there], who ought to come there at the day. *Mirror, c.* 1. § 17.

If all the suitors, who owe suit to this court, be come as they ought to come, and who are not. *Stat.* 18. *E.* 2. § 1*.

Chief pledges. If all the chief pledges be come to the view; and if they have their dozeins entire. *Britton, c.* 29. *Fleta, l.* 2. *c.* 52. § 5. *Mirror, c.* 1. § 17.

If all the chief pledges be come as they ought to come, and which not. *Stat.* 18. *E.* 2. § 2.

Dozein. Of those of 12 years and more, except clerks and knights, and their children, and women, who are not put in the dozein, and of their receivers; and of whose manupast [*i. e.* family or household] they are. *Britton, c.* 29. *Fleta. l.* 2. *c.* 52. § 17.

If all of 12 years and upward be in the dozein. *Fleta, l.* 2. *c.* 52. § 6.

Fealty. If all those of the hundred, or of the fee, above the age of 12 years, have sworn fealty to the king; and of the receivers of others wittingly. *Mirror, c.* 1. § 17.

If all of 12 years be in the assise of the king, and which are not, and who received them. *Stat.* 18. *E.* 2. § 3.

Sorcerers, &c. Of sorcerers and of sorceresses, renegadoes and miscreants. Of traitors. *Britton c.* 29.

Of usurers, sorcerers, apostates, traitors, and their chattels and receivers. *Fleta, l.* 2. *c.* 52.

Of usurers. *Stat. Wal. Britton, c.* 29.

* This has been denied to be a statute; and with some reason, as it seems to be nothing more than a sheriff or steward's charge in the tourn or leet.

Of Christians usurers, and of all their goods. *Mirror, c.* 1. § 17 *.

Of mortal enemies of the king or queen, or of their children, of their consenters [*i. e.* those who abet, countenance, or receive them]. *Britton, c.* 29 †. Treason.

Of the seducers of the lord the king and kingdom, of the lady the queen, and of their children, and their consenters. *Stat. Wal.* 12. *E.* 1.

Of counterfeiters of the money and seal of the lord the king. *Stat. Wal. Britton, c.* 29.

Of clippers and forgers of money. *Stat.* 18. *E.* 2. § 22.

Of treason, as forging of money, &c. 9. *H.* 6. 44.

Of washing or clipping gold or silver. 22. *E.* 4. 22. *Br. Leete,* 26.

Of all manner of treasons. 7. *H.* 6. 12.

Of homicides and murderers. *Stat. Wal. Britton, c.* 29 ‡. Murder.

* All these, it is presumed, were deemed offences against the *King of Heaven,* (see the *Mirror, c.* 1. § 4.) and therefore obtain the first place, where, it will be almost needless to observe, they are intended to stand "more in mock than mark." It should be mentioned, however, that *usurers* are not put into the company of *sorcerers, &c.* by *Britton,* and that the particular meaning of the word *traitors,* as connected with the preceding names, is not understood.

† *Quære,* if the steward may enquire in common leet of high treason done to the king himself? 9. *H.* 6. 44.

It seems of petit treason it may enquire, and not of high treason; for the justices of peace may not enquire of high treason, without special commission. *Br. Ley Gager.* 99.

This argument does not seem conclusive.

‡ Steward in leet cannot take indictment of the death of a man, for this does not belong to the leet; and if he do, the lord shall be punished for contempt. 41. *Ass. p.* 30. *Br. Leete,* 18.

Of homicides, and their encouragers and receivers. *Fleta, l.* 2. *c.* 52.

Of poisoners. *Britton, c.* 29.

Rapes. Of the ravishers of virgins, holy nuns, and matrons honestly living. *Stat. Wal.*

Of ravishers of women. *Britton, c.* 29. *Fleta, l.* 2. *c.* 52.

Of rape of woman which is not presented before coroners. *Stat.* 18. *E.* 2. § 21*.

Of abductors, of wives, and nuns. *Fleta, l.* 2. *c.* 52.

Mortal offences. Of all mortal offenders, in all kinds, as well of the principals 'as' of the accessories. *Mirror, c.* 1. § 17.

* Leet may not take take indictment of rape. 6. *H.* 4. 7. *Br. Leete*, 22.

A man shall not enquire of rape in leet. *H.* 7. 1. 6. [13.] *Fitz. Lete et hundr'.* 10.

A man indicted at the sheriff's tourn, *de raptu felonice facto*, was dismissed by advice of all the justices of the one bench and the other; for they said that the sheriff hath power to enquire of all offences that were trespass or felony at common law, except the death of a man; but of trespass or felony, made by the statute, he had not power to enquire in his tourn, &c. nor the steward in his leet, &c. *M.* 22. *E.* 4. [22] *Fitz. tourne de viscount*, 5. and see also *Br. Leete.* 26.

They can enquire in leet only of felonies at common law, not of those made by statute; and the king cannot grant leet, but as the court of leet is used, and has been used; for he himself may not have leet and use it otherwise than hath been used; but of things which were [punishable] at common law, and greater punishment is given by statute, in this case they are to enquire, according to the common law, and not the statute, as petit treason, made by the statute, is to be enquired of as felony, for that it was felony at the common law, as the servant killing his master, and such like. And note that rape is enquired of in the leet, as it was at common law, as a trespass, and not felony. *T.* 6. *H.* 7. [4.] *Fitz. Lete et Hundr'.* 3.

This offence, which is mentioned by Bracton to have been formerly punished with death, was in his time punished by

Of breakers of the king's prison. *Stat. Wal. Britton, c.* 29. *Fleta, l.* 2. *c.* 52. Prison breach.

Of outlaws, and those who have abjured the realm, returned. *Stat. Wal. Britton, c.* 29. and of their goods and receivers. *Fleta, l.* 2. *c.* 52. Outlaws.

Of outlaws returned without warrant. *Stat.* 18. *E.* 2. § 20.

A man shall not enquire of death of a man in leet. *H.* 7. *H.* 6. [13.] *Fitz. Lete et Hundr'.* 10.

Of all exiles, outlaws, waifs*, and banished [persons] returned, and who have since received them, and of those who have been condemned to death or abjured the realm. *Mirror, c.* 1. § 17.

Of those that fly to church or church-yard, and after depart without doing that which belongeth thereunto. If it be not a woman where whereby the lord may lose. *Stat.* 18. *E.* 2. § 31.

Of "*Hamesokne*," that is, of the invasion of a house. *Stat. Wal.*

Of those who have made hamsoken. *Britton, c.* 29.

Of burglars. *Britton, c.* 29. *Fleta, l.* 2. *c.* 52.

loss of sight, and abscission of the offending member†. *l.* 3. *t.* 2. *c.* 28. By *W.* 1. (3. *E.* 1.) *c.* 13. it was made punishable, as a trespass, by two years imprisonment, and fine at the king's will. And, by *W.* 2. (13. *E.* 1. *st.* 1.) *c.* 34. was made felony; and, by 18. *Eliz. c.* 7. felony without clergy.

* *Men* only are said to be *outlawed; women* in such a case are *waived;* for they are never sworn to the king. See before.

† The *Mirror* says, that rape before the time of King Edward the second, was punished *per urur de eux, & la parte des coils entant pur le appetite enter y my les coils & chalour de stupre veignant des reins del letcher, c.* 4. § 16. This author elsewhere pronounces it to be an abuse of the common law, that rape was a mortal offence, or extended to any other than a virgin. *c.* 5. § 117. 118.

Of breakers of houses, and of their receivers. *Stat.* 18. *E.* 2. § 12.

Arson. Of incendiaries making burnings feloniously, and their receivers, and those consenting with them. *Stat. Wal.*

Of burners of others houses or corn feloniously. *Britton, c.* 29.

Of burners of houses, and their encouragers, and receivers. *Fleta, l.* 2. *c.* 52.

Of thieves, of robbers, *Stat. Wal. Britton, c.* 29. *Fleta, l.* 2. *c.* 52.

Cut-purses. Of cutters of purses. *Britton, c.* 29. *Fleta, l.* 2. *c.* 52. *Mirror, c.* 1. § 17.

Felonies. Of felonies of which the cry hath not come to the coroners. *Fleta, l.* 2. *c.* 52.

Of all manner of felonies, save the death of a man and rape of a woman. 7. *H.* 6. 12. *b.*

Of all felonies, except death of a man, that were felonies at common law. 22. *E.* 4. 22. *Br. Leete,* 26.

Of escapes of thief and of felon. *Stat.* 18. *E.* 2. §.

Petty larceny. Of thieves [guilty] of petty larcenies, [who steal] geese, sheaves, cloths, and such like. *Fleta, l.* 2. *c.* 52 *.

Of petty larcenies. *Mirror, c.* 1. § 17.

Of petty thieves, as of geese, hens, and sheaves. *Stat.* 18. *E.* 2. § 14.

Of thieves that steal clothes or other things through windows or walls. *Stat.* 18. *E.* 2. § 15.

* Of petty larcenies, as of sheaves in August, doves, and hens, and the thiug be not worth 12d. let them be set in the pillory for an hour of a-day, and let them not be receivable to make oath in juries, nor inquests, nor sworn as witnesses, *(ne en tysmoyn jures.)* *Britton, c.* 15.

Of those who clip sheep by night, in sheep-folds, and skin them, or other animals. *Stat. Wal.*

Of petty thieves, who clip or burn sheep, or other beasts, by night, in order to steal the skins. *Britton, c.* 29.

Of those who take and collect, by night, corn in autumn, and those who carry it away; and of all other malefactors of this sort. *Stat. Wal.*

Of thef-bote, that is, of amends of theft taken without consideration of the court of the lord the king. *Stat. Wal.* Thef-bote

Of those who take thief-boot. *Britton, c.* 29.

Of the ransomers of larceny. *Fleta, l.* 2. *c.* 52.

Of receivers of thief-boot. *Mirror, c.* 1. § 17.

Of those that go in message for thieves. *Stat.* 18. *E.* 2. § 16.

Of butchers buying and selling, knowingly, flesh stolen. *Stat. Wal. Britton, c.* 29. Of those who knowingly whiten [i. e. curry or dress] ox or horse skins, of beasts stolen, so that they may not be known. *Stat. Wal. Britton, c.* 29. Buying and selling things stolen.

Of dealers in stolen clothes, turning them into a new form, and changing the old: as, making of a mantle, a *tunic*, or supertunic, and the like. *Stat. Wal.*

Of dealers buying, knowingly, wares stolen, and putting them forth in another shape. *Britton, c.* 29.

Of maimers and wounders. *Fleta, l.* 2. *c.* 52. Mayhem.

Of bloodshed. *Stat. Wal. Britton, c.* 29. 22. *E.* 4. 22. *Br. Leete*, 26. Bloodshed.

Of all blood wickedly shed. *Mirror, c.* 1. § 17.

Of bloodshed and wound made. *Stat.* 18. *E.* 2. § 18.

Of affray, of brawlers. *Britton, c.* 29. Affray.

Of those that imprison freemen whomsoever, *Stat. Wal.* False imprisonment.

Of those who have made a prison of their houses. *Britton, c.* 29.

Of imprisoners. *Fleta, l.* 2. *c.* 52.

Of persons repleviable unjustly detained, and those not repleviable dismissed. *Fleta, l.* 2. *c.* 52.

Of persons imprisoned, and afterward let go without warrant. *Stat.* 18. *E.* 2. § 32.

Of every wrongful detinue of the body of a man. *Mirror, c.* 1. § 17.

Approvers. Of those who have retained provours*, in any prison but the king's. *Britton, c.* 29.

Of those who shall have retained approvers *. *Fleta, l.* 2. *c.* 52.

Retaining felons out of the king's prison. Of those who have retained felon, elsewhere than in the king's prison, beyond a day and a night. *Britton, c.* 29.

Deceit. Of treacherous persons and deceivers. *Mirror, c.* 1. § 17.

False dice. Of makers and haunters [i. e. users] of false dice. *Mirror, c.* 1. § 17.

Conspiracies. Of all manner of conspirators. *Mirror, c.* 1. §. 17.

Disturbing lawful judgments. Of the disturbers of the framing of lawful judgments. *Mirror, c.* 1. § 17.

False judgments. Of the framers of wrongful judgments, and of the abettors and consentors. *Mirror, c.* 1. § 17.

Of every false judgment given by another view in the hundred or in the fee. *Mirror, c.* 1. § 17.

Hue and cry. Of hue raised. *Stat. Wal.*

* An approver or *provour* is a person indicted of high treason or felony, and in prison for the same; who, upon his arraignment, before any plea pleaded, doth confess the indictment, and takes a corporal oath to reveal all treasons and felonies that he knoweth of; and therefore prays a coroner, before whom he is to enter his appeal or accusation, against those that are partners in the crime contained in the indictment. 3. *Inst.* 129.

Of hue and cry wrongfully levyed; and rightfully levyed and not pursued. *Britton, c.* 29. Who have levyed it, and by whom the suit fails. *Fleta, l.* 2. *c.* 52. *Mirror, c.* 1. §. 17.

Of hue and cry levyed and not pursued. *Stat.* 18. *E.* 2. §. 17.

Of every wrong done, by the king's ministers and others, to the commonalty of the people. *Mirror, c.* 1. §, 17. Wrongs by the king's ministers.

Of outrageous toll-takers. *Mirror, c.* 1. § 17. Excessive toll.

Excessive toll is inquirable in a leet. 4. *Leo.* 12.

Of outrageous distress, whether in another's fee, or in the market for a foreign contract. *Mirror, c.* 1. §. 17. Outrageous distresses.

Of those who make *punt-breche*, that is, of the breakers of pounds, in which animals are impounded. *Stat. Wal.* Pound-breach.

Of those who have made pound-breech. *Britton. c.* 29*.

Of fore-stalls, that is, of the rescous of beasts. *Stat. Wal.* Wrongful replevin, and rescous.

Of all wrongful replevies. Of all wrongful rescouses. *Mirror, c.* 1. §. 17.

Of persons doing other things against the peace of the land. *Fleta, l.* 2. *c.* 52. Offences against the king's peace.

Of those who, against the coming and eyre of the justiciary, have withdrawn themselves, and after the eyre have returned. *Stat. Wal.* Withdrawing before the eyre, and returning after.

* Pound-breech is not inquirable in a leet, for it is not a common nuisance. 4. *Leo.* 12.

It is, however, an offence of a higher degree, *viz.* a contempt of the law, and against the king's peace, and, as such, no doubt inquirable in the leet.

Haunting taverns. Of those that continually haunt taverns, and a man knows not whereon they live. *Stat.* 18. *E.* 2. § 28.

Turning day into night. Of those that sleep [in] the day, and watch [in] the night, and eat well and drink well, and have nothing. *Stat.* 18. *E.* 2.

Of night walkers. 22. *E.* 4. 22. *Br. Leete*, 26*.

Of vagrants through the country, who are of no one's manupast [i. e. family or household], of whom is suspicion of evil. *Britton*, *c.* 29.

If there be any vagrants, of whom there be had any presumption of evil, then of their receivers. *Fleta, l.* 2. *c.* 52.

Of those who entertain persons unknown, for more than two nights. *Stat. Wal.*

Breach of the assise. Of the assise of bread and ale not observed, and of those who infringe it. *Stat. Wal.*

Of the assise of bread and ale broken. *Britton*, *c.* 29. *Stat.* 18. *E.* 2. § 24†.

* Court leet hath power to fine men that are *noctivagant.* *(Rastal. Leet, 2.) Popham*, 208. The being *noctivagus* is a misdemeanor, and contrary to the statute of Winchester; and every one may arrest him. By all the court. *Ibid*, and see *Latch.* 173.

† By the *Judicium Pillorie*, 51 *H.* 3. *stat.* 6. If a baker or a brewer shall have been convicted, because he shall not have observed the assises [of bread and ale] the first, second, and third time, let him be amerced according to the quantity of his offence, if he shall not have offended grievously; and if he shall have offended grievously and often, and he shall have been unwilling to be corrected, let him suffer judgement of the body, to wit, a baker the pillory, and a brewer the tumbrel or chastisement. First let them swear six lawful men faithfully to gather all the measures of the town, that is to say, the bushel, half-bushel, and quarter bushels, all the gallons, pottles, and quarts, as well of taverns as others; measures and weights, to wit, pounds, half-pounds, scales, and smaller weights of the towns, by which they weigh the bread of the towns; by which they weigh the

Of those who buy and sell by weights and measures out of the assise. *Britton, c.* 29.

bread in the court, to wit, of every sort of bread one loaf; and upon the measures, ells, weights, [and] upon each loaf let them then write distinctly the names of those whose they are, and let them gather the measures of the mills. Afterwards let twelve lawful men faithfully answer to the things demanded of them on behalf of the king; let the things be demanded of them which are [here] written; and those things which are written let them propose secretly, and answer privately: and let it be commanded to the bailiffs that they have the bodies of all bakers, and all brewers, together with the measures, and all things underwritten. First, let it be inquired of the sale of wheat, *viz.* how a quarter of the best wheat was sold on the last day, and how a quarter of the less price, and how of the third price, and how a quarter of barley and oats? Afterwards, how the bakers' loaves answer in their court, *viz.* wastell, and other loaves, according to the sale of the better price, or the third price. Also for how much increase or decrease in the sale of a quarter of wheat the baker ought to change his assise. Also how much the wastell of a farthing, and all other loaves, ought to weigh, according to the sale of a quarter of wheat, which they present. Also for what default in the weight of a loaf of a farthing the baker ought to be amerced, or suffer the judgement of the pillory, according to the custom of their court. Also, if any steward or bailiff shall, for any reward, have remitted the judgment of the pillory or tumbrel adjudged, or of right to be adjudged.

By §. 2. If there be in the town a pillory of due strength, according to what belongs to the liberty of markets, which they may use, if it shall be necessary, without danger of the body of man and woman. And afterwards let it be inquired of the assise and sale of wine, after the departure of the justices itinerant, or of their [fellows] who have been last in office of the market in the town: *viz.* of the names of the vintners, for how much they have sold a gallon of wine; also, if any wine be, in the town, corrupt, and not wholesome, for the body of a man; of the assise of ale in the court of the town, how it is, and if it be observed; otherwise, what the brewers have sold against the assise: and let them present their names distinctly and openly; and, for every default, they ought to be

Of violators of the assise of bread, ale, wine, and cloths. *Fleta, l. 2. c. 52. § 27.*

amerced, or suffer the judgment [of the pillory or] tumbrel, if they have sold against the assise.

By § 3. When a quarter of barley is sold for 2s. then let four quarts of ale be sold for 1d.; when for 2s. 6d. then seven quarts for 2d.; when for 3s. then three quarts at a penny; when for 3s. 6d. then five quarts at 2d.; when for 4s. then two quarts at a penny; and so successively let it increase or decrease by 6d.

See also the *Assissa Panis et Cervisiæ.* 51. *H. 6. st.* 1.

Assise of bread and ale, pillory and tumbrel, are appendant to view of frankpledge; where a man hath it by grant of the king, and if he do not use pillory and tumbrel, he shall lose his franchise. *It. Canc. 6. E. 2. Br. Quo Warranto. pl. 8.*

The assise of bread is an ordinance ascertaining the *weight* and the *price* of it, which is to be regulated by the price of corn. 3. *Bur.* 1861.

The assise, both of bread and ale, appears to have been first settled by the statute, entitled, *Assissa Panis et Cervisiæ*, 51. *H. 3. st.* 1. which statute, so far as relates to the assise of bread, was repealed by 8. *Ann. c.* 18. which was itself repealed by 31. *G. 2. c.* 29.

The breach of assise (whether set by the leet or not) was always presentable and punishable in that court. 3. *Bur.* 1862.

The 31. *G. 2. c.* 29. repeals all former laws respecting the assise of bread; but still proceeds upon the old principle of fixing both the price and weight. This act saves the jurisdiction of courts leet*: and, therefore, whenever and wherever an assise is made, according to the directions of 31. *G. 2. (c.* 29.*)* the court leet may inquire and punish for the breach of it. 3. *Bur.* 1862.

An action of debt was brought by the lord of the manor of Stepney for an amerciament, set and affeered in the court leet there, on a presentment of the defendant, for having in his custody, and exposing to sale, a loaf of bread, pretended to be and as and for a quartern loaf of the weight of 4lb. 5oz. ½.; whereas it wanted 4oz. ½.—plea, *nil debet.* Verdict for the plaintiff. On motion for a new trial, the court was unani-

* By § 43. Provided that this act, or any thing therein contained, shall not extend to prejudice any right or custom of any lord or lords, of any leet, to set, inquire, and punish the breach of assise of bread within their respective leets, or views of frankpledge.

Of those who violate the King's true assises. *Fleta*, *l.* 2. *c.* 52. § 21.

Of every assise broken, of bread, ale, wine, weights, measures, beams, bushels, gallons, ells, and yards. *Mirror*, *c.* 1. § 17 *.

If any one use false ells, or false weights or measures. *Jud. Pil.* 51. *H.* 3. *st.* 6. § 3. False weights and measures.

Of bushels, gallons, and other unjust measures, [and those selling by them.] Of ells and weights unjust, and those who sell by them. *Stat. Wal.*

Of false measures and weights. *Fleta*, *l.* 2. *c.* 52.

Of all false scales, and who have used them. *Mirror*, *c.* 1. § 17.

Of false measures, as of bushels, gallons, yards, and ells. *Stat.* 18. *E.* 2, § 25.

Of false balances, and of false weights. *Stat.* 18. *E.* 2. § 26.

If there be in the town any who buy by one measure and sell by another. *Jud. Pil.* 51. *H.* 3. *st.* 6. § 3. Buying by one measure, and selling by another.

mously of opinion, that the offence presented was not within the jurisdiction of the leet; because it was a new offence, created by act of parliament (3. *G.* 3. *c.* 11.), and could be prosecuted only in the manner directed by the act [which has no saving of the jurisdiction of the leet; because, it was providing for cases where the leet had no jurisdiction. 3. *Bur.* 1863.]. The offence cognizable in the leet is *fractio assisæ*; and the setting the assise (which must fix both *price* and *weight*) is the basis of its jurisdiction. Verdict set aside. 3. *Bur.* 1859.

* It is not a good prescription that he and his predecessors, seised of the said manor, have used to have assise of bread and ale, and also to have search of weights and measures, and to have the punishment of them; for this belongs properly to a court leet to punish; and also he has not any court to punish such offences by presentment or otherwise. *Roll. A.*

[Of those] who have bought by one kind of measure, and sold by another kind, in deceit of merchants. *Mirror, c.* 1. § 17.

Of those that have double measure, and buy by the greater and sell by the less. *Stat.* 18. 2. § 27.

Corrupt victuals. If any butcher shall have sold meats corrupt, or [of cattle dead of the] murrain. *Jud. Pil.* 51. *H.* 3. *st.* 6. § 3.

Of butchers and [those] who sell unwholesome flesh for sound, and spoiled for *bion cit. Mirror, c.* 1. § 17.

Concerning cooks, if they seethe flesh or fish in bread, or in water, or in other manner not wholesome for man's body, or after they have kept such things so that they shall have lost their due nature, and boil them over again, and sell them. *Jud. Pil.* 51. *H.* 3. *st.* 6. § 3.

Of corrupt victuals. 9. *H.* 6. 53. *Br. Leete.* 1*.

Unwholesome drink. Of those who sell spoiled wine for sound, and ale raw, or *rousse oude feres ou deceraie, pur convenable & sane. Mirror, c.* 1. § 17.

Forestalling. Of forestallers, that, before the hour accustomed and ordained in the town, buy any thing against the ordinance of the town and market; or who go out of the town meeting in the way things to be sold, and buy [them] without the town, that they may sell them dearer, in the town, to the regrators, than those who brought them would do, if they had come to the town, or into the market. *Jud. Pil.* 51. *H.* 3. *st.* 6. § 3.

Of every forestallment done in the common way. *Mirror, c.* 1. § 17.

* See, on this head, 4. *Inst.* 261.

Of curriers of skins, except in cities and boroughs. *Fleta, l.* 2. *c.* 52. § 35. Curriers.

Of tanners and curriers of hides. *Mirror, c.* 1. § 17.

Of curriers of hides dwelling elsewhere than in a merchant town. *Stat.* 18. *E.* 2. § 30.

Of sellers of old clothes, dwelling out of great towns in places forbidden. *Mirror, c.* 1. § 17. Sellers of old clothes.

Of sellers of clothes dwelling elsewhere than in a merchant town. *Stat.* 18. *E.* 2. § 30.

Of those who use two trades, namely, of shoemaker and tanner, or of tanner and butcher, or the trade of tailor and salesman [*sub.* of old clothes], and also of salesman, except in boroughs and common places. *Fleta, l.* 2. *c.* 52. § 35. Double trades.

Of misdoers in parks and in fish ponds. *Stat. Wal. Britton, c.* 29. *Fleta, l.* 2. *c.* 52. § 12. Misdoers in parks, &c.

Of misdoers in coney-burrows and warrens. *Fleta, l.* 2. *c.* 52. § 12.

Of those who take doves flying from dove-houses. *Stat. Wal.* Taking of doves.

Of the takers of another's doves. *Britton, c.* 29.

Of those that take doves in winter by snares, or other engines. *Stat.* 18. *E.* 2. § 33.

Of the king's villains remaining out of his demesnes. *Fleta, l.* 2. *c.* 52. § 23. The king's villains.

If there be any of the king's villains fugitive, dwelling otherwise than in the king's demesnes; and of those who are within the king's demesnes, and have not abiden a year and a day. *Stat.* 18. *E.* 2. § 45.

Of the lord's men remaining in another view. *Fleta, l.* 2. *c.* 52. § 24. Lord's men.

Of the rights withdrawn from the lord the king, as of custodies, wards, marriages, reliefs, fees, advow-

sons of churches, suits of counties, and commotes [hundreds], who shall have withdrawn them, and from what time. *Stat. Wal.*

The king's rights withheld.

Of rights belonging to the king withheld, as wards, marriages, reliefs, *demeynes*, advowsons of churches, of all manner of suits. *Britton*, *c.* 29.

Of the right of the king concealed or alienated, in land or in sea; by whom it shall have been alienated or concealed, and from what time. *Fleta*, *l.* 2. *c.* 52. § 22*.

Of those who shall have appropriated to themselves rights royal, without warrant, as gallows, amends of the assise of bread and ale broken, plea of replevin, and other rights of this kind, which especially, and by prerogative, belong to the court of the lord the king. *Stat. Wal.*

Purpresture on the king or lords.

Of purprestures made upon the king or the lord. *Fleta*, *l.* 2. *c.* 52. § 25.

Of every purpresture, and encroachment, made upon the king, or upon his dignity. *Mirror*, *c.* 1. § 17.

Of those who claim franchises and rights royal. *Britton*, *c.* 29.

Of new franchises, or customs, or rights, raised since the last view, in water or in land. *Britton*, *c.* 29.

Of new customs, raised in land or in water. *Fleta*, *l.* 2. *c.* 52. § 32.

Treasure trove, &c.

Of treasure hidden in the earth and found. Of waifs, or wrecks of the sea, found and detained. *Britton*, *c.* 29.

Of treasure found, murders, and waif pursued [or]

* *Fleta* seems to confine this inquiry to the tourn, or view of the hundred.

retained. Of wreck of sea retained. *Fleta, l.* 2. *c.* 52. §§ 11. 34.

Of treasure found, wrecks, waifs, and estrays. *Mirror, c.* 1. § 17.

Of treasure found. *Stat. Wal. Stat.* 18. *E.* 2. § 23.

Of customs and services due to this court withdrawn, how and by whom, in the time of what bailiff. *Stat.* 18. *E.* 2. § 6. Customs withdrawn.

Of those who suffer people to use their mystery for reward. *Mirror, c.* 1. § 17.

Of the way obstructed, or restricted or straightened. *Stat. Wal.*

Of highways stopped or straightened. *Britton, c.* 29. Common nuisances.

Of ways and paths unjustly obstructed or straightened. *Fleta, l.* 2. *c.* 52. § 20.

Of royal ways not [sufficiently] enlarged. *Ibid,* § 28.

Of ways and paths stopped or diverted. *Stat.* 18. *E.* 2. § 10*.

Of walls, houses, gates, ditches, or marle-pits [or other disturbances], raised or made near the public [upon any common] way, to the nuisance of the same way, and to the danger of passengers, and of those who have raised and made the same. *Stat. Wal. Britton, c.* 29.

Of ditches, walls, causeways, pools, or such like, raised, prostrated, or exalted to nuisance. *Fleta, l.* 2. *c.* 52. § 19.

Of walls, houses, ditches, and hedges, set up, or beaten down, to nuisance. *Stat.* 18. *E.* 2. § 8.

* The stopping of the highway royal shall be punished by the leet. 27. *H.* 8. 26. 27. *Br. Action, sur le case.* 6.

Of purprestures made in common places, in land, or in water, or elsewhere. *Mirror. c.* 1. § 17.

Of purprestures made in lands, woods, and waters, to nuisance. *Stat.* 18. *E.* § 7.

Of the course of water diverted. *Stat. Wal.*

Of waters stopped, straightened, or turned aside. *Britton, c.* 29.

Of waters turned aside or obstructed. *Fleta, l.* 2. *c.* 52. § 18.

Of waters turned or led out of their right course. *Stat.* 18. *E.* 2. § 11.

Of those who remove or corrupt landmarks. *Stat. Wal.*

Of landmarks taken away or injuriously changed. *Britton, c.* 29.

Of landmarks broken, removed, or diminished. *Fleta, l.* 2. *c.* 52. § 17.

Of boundaries removed to common nuisance. *Mirror, c.* 1. § 17.

Of bounds withdrawn and taken away. *Stat.* 18. *E.* 2. § 9.

Of bridges and of causeways broken, and who ought to repair them. *Britton, c.* 29. *Fleta, l.* 2. *c.* 52. § 33. *Mirror, c.* 1. § 17.

Of ditch not scoured, or bridge broken. 22. *E.* 4. 22. *Br. Leete,* 26*.

Of all common nuisances. 22. *E.* 4. 22. *Br. Leete,* 26†.

* But not of close broken, for this is particular. 22. *E.* 4. 22. *Br. Leete,* 26.

† The erection of a conigree, or dove-house, is presentable in a leet, and finable there. *Moore,* 421. But, *vide* 1. *Roll. Rep.* 201. 2. *Roll. Rep.* 330.

None may erect a dove-house, *de novo,* but the lord of the manor, or the parson of the church; and, in ancient law, this

By 4. *Ja.* 1. *c.* 5. All the offences in this act, and in '1. *Ja.* 1. *c.* 9.' mentioned (*i. e.* being drunk, and continuing drinking or tippling, or suffering persons to continue drinking and tippling), shall be diligently enquired of, and presented before the justices of assizes, &c. and in every court leet; and, thereupon, such due proceedings shall be against the offender and offenders, for their due conviction, in that behalf, as in such like cases, upon any indictment or presentment, is used by the laws of the realm, or customs of the city, town, or place, where such presentment or indictment shall be enquired of and found. Drunkenness and tippling.

Scolding, often repeated to the disturbance of the neighbourhood, makes it a nuisance; and, as such, it always has been punishable in the leet*. 6. *Mod.* 213. *The Queen* v. *Foxby*. Scolding.

was inquirable in a leet, among common nuisances. *Moore*, 238.

None may erect a dove-cote but the lord of a manor; and, if any do it, he may be punished in the leet. 5. *Rep.* 104. *b.*

Erection of a dove-house not a common nuisance, nor an offence inquirable or punishable in a leet. *Cro. Jac.* 491. 492.

An assault made to one man is not a thing enquirable in the sheriff's tourn, by reason it is but a wrong only to one person, which person may have action sole; nothing shall be enquired there, but an action popular—as stopping a water, which is in casement of all the people, or a bridge, by which the people ought to pass, and affray, bloodshed, and such like, which are grievances to many people. *H.* 4. *H.* 6. [10.] *Fitz. Tourne de Vicount*, 1. And note, that

Nuisance is not to those who have interest in action, but it is to a great number of people, as stopping a way, or not repairing a bridge, and such like. 27. *Ass. p.* 6. *Br. Leete*, 30.

* It is said, that a common scold is punishable by being put into the ducking-stool. 1. *Haw. p. C.* 200, and *v. Moore*, 847, where in assault and battery, by husband and wife, against a constable and two others, they pleaded in justification, that the wife was presented in the leet to be a common

Watches. Of vills not watched. *Britton, c.* 29.

Of watches not observed. *Fleta, l.* 2. *c.* 52. § 28.

[Of railers and sowers of discord among neighbours. *Hob.* 246 *.]

General articles. Of all other articles which may avail to destroy offence. *Mirror, c.* 1. § 17 †.

Indictments. By *Magna Charta, c.* 17. ‡ The jurisdiction of the leet is abridged. Its power "to hear and determine" is taken away; but not its power "to take indictments, and apprehend the parties indicted." 3 *Bur.* 1861.

Indictment, taken there, is as good as in the King's Bench, of things touching the jurisdiction of the leet. 10. *H.* 6. 7. *Br. Ley Gager,* 99.

scold, whereby the steward made warrant to the constable *to punish her according to law, &c.*

No inquiry shall be made in those courts, but of offences inquirable by the common law; unless the statute makes express mention, that it shall be inquired in the tourn or leet; for, otherwise, those courts have not the judgment of it. 1. *R.* 3. 1. *Br. Judgment, pl.* 146.

* One was [presented by the churchwardens as] a railer, and a sower of discord between neighbours, whereupon the archdeacon enjoined him purgation; and the court award prohibition, for [that] the cause belongs to the leet. *Hob. ubi sup.*

† In ancient time the king's courts, and especially the leets, had power to enquire of, and punish, fornication and adultery, by the name of 'letherwite.' 2. *Inst.* 488.

‡ *Nullus vicecomes, constabularius, coronator, vel alii ballivi nostri, teneant placita corone nostre.*

The authority of the sheriff to hear and determine theft, or other felonies, by the common law, in the tourn, is wholly taken away by this statute; howbeit his power to take indictments of felonies, and other misdeeds, within his jurisdiction, is not taken away by this act. 2. *Inst.* 32.

It has been elsewhere said, that neither the sheriff, nor steward, in his tourn or leet, ever had any such authority.

Tenants in leet may make by-laws, and they shall bind them, but not strangers. 11. *H.* 7. 13. 14. *Br. Prescription*, 106. By-laws.

A leet of itself hath no authority to make by-laws; but by custom it is good. *Lane*, 56.

The leet, by a custom, may make by-laws, [touching common] though not originally. This custom may have reasonable commencement; for it might be agreed, at first settlement of the common, by all parties, that by-laws should be at the leet, (by *Wild, J. Archer, J.* agreeing; but *Tirrel, J. contra.* I conceive the custom is not good. Leets are to meddle with things belonging to the peace, and it is no more proper for them to meddle with commons *, than for a court baron to be intitled to pleas of the crown. If a leet may make one by-law, then the court baron may make another; and how shall we know which is to be obeyed? As to the cases put on the other side, they must be understood where a court leet and court baron are held together.) *Carter*, 179.

The constables, or petty constables, are chosen by the common law at the leet or tourn. 4. *Inst.* 265. Constables.

At common law all constables were chosen at the leet; where there is no leet, at the tourn; whether by the steward, or the homage †, hath been a great question. 2 *Salk.* 502. *Comb.* 416.

The election of constable properly belongs to the homage †. 2 *Jones*, 212.

* An amerciament for a trespass on the soil of the lord is not affeerable; but amerciaments on other trespasses on the common are. (By *Keeling, C. J.*) 2. *Keble*, 139.

Inclosure of common is a private wrong, and no public nuisance; and presentment [thereof], at the leet, is void. 9. *Rep.* 113.

† The word *homage* is improper here, and only applicable to the jury in a *court baron.*

Of common right, the constable is to be chosen by the jury in the leet; and, if the party chosen be present, and refuse, the steward may fine him; if absent, the homage must present his refusal at the next court, and then he shall be amerced; also, if the party chosen be present, he shall take the oath in the leet; if absent, before the justices of peace *: but a custom ought to be alledged for distraining for the penalty. 1. *Salk.* 175. 1. *L. Ray*, 70.

A person elected constable, at a leet, where he is not present, ought to have special notice of his election. 1. *L. R.* 71.

The sessions cannot discharge a constable appointed at the leet, 2. *Strange*, 798; and can only appoint constables until the lord shall hold a court, not for a year, or till others be chosen. 2. *Strange*, 1050.

Mandamus granted to a steward of a court leet to swear a constable. *Comb.* 285.

The homage having presented one to be constable, the steward refused to swear him, and swore in another; and the justices ordered that the former should serve the office, and swore him in accordingly, and the order on *certiorari* was confirmed. 2. *Jones*, 212.

By 13. and 14. C. 2. *c.* 12. In case any constable shall die, or go out of the parish, any two justices may make and swear a new one, until the lord of the manor shall hold a court leet; and, if any officer shall continue above a year in his office, the justices in their quarter sessions may discharge him, and put another in his place, until the lord of the manor shall hold a court.

* Constable elect may be sworn in before a single justice. 2. *Strange*, 1149. 2. *Jones*, 212.

By 31. *Eliz. c.* 5. § 7. All suits to be pursued upon any statute for using any unlawful game, or for not using of any lawful game, or for not having bows and arrows, according to the law, or for using any art or mystery in the which the party hath not been brought up, according to the statute in that behalf made, shall be enquired of, heard, and determined, in the leet within which it shall happen *.

* Leet can only inquire, not try on. 31. *Eliz. c.* 5. § 7. 2. *Keble*, 50.

Bennet, bailiff of Westminster, having levied money upon several persons, upon presentment against them in the leet at Westminster, for using trades not having been apprentices, it was agreed *per cur'*, upon complaint of this matter against B. that the statute, 5. *Eliz.* does not give the leet power to proceed upon this statute, though it was said for B. that the statute, 31. *Eliz. c.* 5, which wills, that informations and actions upon penal statutes shall be brought in the proper counties, and names assises, sessions, leets; but to this it was answered, *per cur'*, upon reading the last words of the above statute, that this is intended of other offences there, of which the leet had conusance before—as of buts, and bows, and arrows, &c. *Sid.* 289.

CHAP. VII.

OF THE STEWARD.

Court. THE steward, the bailies, the suitors, and the men impaneled are the court; and, if no one was there but the steward, he would not be a court, nor have power to do any thing. 7. *H.* 6. 13.

Sheriff. The power of the sheriff in tourn, and steward in leet, is all one. 22. *E.* 4. 22. *Br. Leete*, 26.

Judge. The steward in leet is judge, and may assess fine. 7. *H.* 6. 12. *Br. Leete*, 14.

He that is judge in leet is judge of record. 10. *H.* 6. 7.

Power. As to things to which his power extends, the steward hath equal power with the justices [of the bench]. 7. *H.* 6. 12. *Br. Leete*, 14.

Affray. He is judge of record, and hath such power; if any affray be made before him in his court, he may award them [*sub.* who make it] to prison, and may assess a fine upon them, according to his discretion, without being assessed in other [manner]. 10. *H.* 6. 7.

Contempts, &c. If any contempt, or disturbance to the court, be committed in any court of record, the judges may set upon the offender a reasonable fine; and a leet is a court of record, and the steward is judge there; and, therefore, if any contempt or disturbance be made before him, he may set a reasonable fine upon the offenders. 8. *Rep.* 38, *b.* *Gricsley's Case.*

Steward of leet may imprison one who makes affray, or assault in court, before him, to the disturbance of the peace. 21. *H.* 7. 32. *Cromp. J. P.* 130. *b.*

If any misdemean himself in the leet, in any outrageous manner, the steward may commit him. *Owen*, 113*.

For contempts and misdemeanors in court, before the steward himself, he hath conusance of them, and, therefore, may impose fine for them; and thereof need not make inquiry. 8. *Rep.* 41. *Griesley's Case.* For when he is judge of the default, it is reason that he should impose the punishment. *Sav.* 94. S. C. And nothing is more naturally to be punished in the leet than the defaults committed in the leet. *Ibid.*

The steward of a leet imposes a fine of 40s. upon one who makes assault only upon another, in the view and presence of the court, *in disturbance and contempt of the court, and nuisance of the people there. Dyer*, 223. *b.*

Steward of the leet told defendant, that he ought to be sworn to inquire, &c. to which defendant answered "*in saying so thou liest*", for which the steward fined him 20s.; and, on action brought for the fine, plaintiff had judgment. *Cro. Eliz.* 581. *Owen*, 113. *Moore*, 470.

Debt for 40s. imposed as a fine upon the defendant, at a court leet of the plaintiff's, for a contempt there committed; the contempt was, *that he put on his hat in the court*, and, upon the steward's admonishing him of such his doing, he answered, *I do not value what you can do*; and adjudged for the plaintiff. *Raym.* 68.

* Court leet may fine, and not imprison. 11. *Rep.* 43, b. 1. *Roll. Rep.* 74.

There is no court which may fine and cannot also imprison, but a leet, which is the Phœnix; for the steward may fine, but not imprison. 1. *Roll. Rep.* 35.

This *dictum* of Lord Coke is contradicted by the ancient law, and by every other authority.

The homage [i. jury] at a court leet, time out of mind, had elected a constable; and, because J. S. was elected, according to the custom, for the next year, and refused to take the oath, and departed in despight of the court, the steward fined him £5, and resolved good, and that without any affeering. 8. *Rep.* 38.

Bailiff. Steward may command the bailiff to make a panel upon pain. 7. *H.* 6. 12, *b.*

If the bailiff of a leet refuse in court to execute his office, the steward may set a reasonable fine upon him. 8. *Rep.* 38, *b.*

Indictments. By 1. *E.* 3. *st.* 2. *c.* 17. Sheriffs in their tourns, and in other places, where they have power to inquire of malefactors by the king's precept or by office, shall cause their inquests of such malefactors to be taken by lawful men, at least twelve, who shall put their seals to such inquisitions; and those that shall be found culpable by such inquests, they shall take and imprison, as they have used aforetime to do. And, if they do imprison other than such as have been indicted, by such inquisitions, the parties imprisoned shall have their action, by writ of imprisonment, against the sheriff, as they would have against any other person that should imprison them without warrant. And, as it hath been said of sheriffs, it is to be observed of every bailiff [or steward] of franchise.

By 1. *E.* 3. *st.* 2. *c.* 17. The sheriffs and bailiffs [or stewards] of franchises, and all other that take indictments at their tourns or elsewhere, where indictments shall be made, shall take such indictments by roll indented; whereof the one part shall remain with the indictors, and the other part with him that shall take the inquest; so that the indictments be not imbezzled, as before this time they have been, and so that one of

the inquest may shew the one part of the indenture to the justice, when he shall come to make deliverance.

The steward of a leet may send a man to gaol, who is apprehended for felony within the circuit of the leet, as well before the leet as after; and may cause him to be indicted at the leet, or before a justice of the peace. 13. *H.* 4. 12. *Crompton, J. P.* 92, *b.*

The steward, at the day of the leet, hath power to inquire of treason and of felony, by way of indictment; which indictments are as strong as if they were taken in the King's Bench: and, he also hath power to inquire of all manner of frays and assaults. 10. *H.* 6. 7.

Steward in leet cannot take indictment of robbery done out of his precinct. 41. *Ass. p.* 30. *Br. Leete*, 18.

The steward of the leet ought (*per* Montague) to certify, by indenture, to the next sessions of the peace, the indictments of felons taken before him in the leet. 27. *H.* 8. 2. *Cromp. J. P.* 150. And *vide* 8. *H.* 4. *fo.* 17, that steward of leet ought to deliver the indictments of felonies before justices of deliverance; for the lord cannot arraign and deliver the persons indicted within the leet. *Ibid.* 151.

If felony be presented in a leet, and the steward of the leet present it to the justices at the next sessions, by indenture, this shall serve for indictment: and *e contra*, if he shew the rolls only, and do not certify it by indenture. 27. *H.* 8. 2. *Br. Indictments**.

By 4. *E.* 4. *c.* 1. Every steward, keeping or holding wapentake or leet of any person out of city, borough, Cloths.

* Clearly, an indictment of assault and battery found, in leet, without bloodshed, is worth nothing; for such indictment, found before the sheriff in his tourn, was adjudged void. *Dyer*, 233, *b.*

or town, where no mayor, master, bailiff or bailiffs, or portreves, is or are, shall have power or authority to hear and determine the complaints of every cloth-maker and labourer, as well for non-payment of the wages of the said labourers, as of the forfeiture and damages [given by this act], by due examination of the parties in this behalf; and, thereupon, for non-payment of the said duties and forfeitures, and for the said damages, to commit the offenders in this behalf to the next jail, within the same county, there to remain until the said duties, forfeitures, and damages be, to the said labourer, or cloth-maker, duly paid. And also that every steward of wapentake and leet, upon information or complaint of any other person, who is not grieved in this behalf, shall have power, within his jurisdiction, to make come before him the party, against whom the information or complaint shall be made, for offending this ordinance; and him to examine in and upon the matter contained in the said information or complaint: and if he find, by examination, or other due proofs, the party herein guilty or defective, then the same party so often, and for every time as he is so found guilty or defective, shall forfeit to the king, or to such person or persons, who is or are intitled to have fines or amerciaments for offences done within their jurisdiction, 3*s.* 4*d.* And every officer aforesaid, within his jurisdiction, upon every of the said informations or complaints, shall have full power to make such process against the party, upon whom such information or complaint, as before is recited, shall be made, to make him come personally before him hereupon to be examined, as justices of peace have, upon information, or complaint made to them for surety of peace, without any

fee or reward to be taken or had by any officer in this behalf, for the execution of his office in this behalf.

For conservation of the peace, the sheriff in the tourn, and the steward in the leet, may take recognisances for keeping of the peace. 4. *Inst.* 263. Recognisances.

By 14. and 15. *H.* 8. *c.* 10. No person [shall] trace, destroy, and kill any hare in the snow, with any dog, bitch, bow, nor otherwise. And that stewards of leets shall have full authority and power to enquire of such offenders; and, after such inquisitions found, the said stewards of leets, for every hare so killed, shall cess upon every such offender, 6*s.* 8*d.* to be to the lord of the leet. Tracing hares in the snow.

By 32. *H.* 8. *c.* 13. § 2. No commoner, within any forest, chase, moor, marish, heath, common, or waste ground, nor any other person, shall have or put to pasture, into or upon any such common, &c. any stoned horse, being above the age of two years, and not being of the altitude of 15 handfuls, to be measured from the lowest part of the hoof of the forefoot unto the highest part of the wither, and every handful to contain four inches of the standard, to pasture, feed, or be, in or upon any of the forests, &c. within any of the shires or territories of Norfolk, Suffolk, Cambridge, Buckingham, Huntingdon, Essex, Kent, South-Hampshire, North-Wiltshire, Oxford, Berkshire, Worcester, Gloucester, Somerset, North-Wales, South-Wales, Bedford, Warwick, Northampton, Yorkshire, Cheshire, Staffordshire, the county of the city of York, the town and liberties of Gloucester, the county of the town of Kingston-upon-Hull, the county palatine of Lancaster, the counties of Salop, Leicester, Hereford, and Lin- Horses put on the common.

coln*; nor shall put to feed or pasture any stoned horse, being above the age of two years, and not being of the altitude and height of 14 handfuls, to be measured as is abovesaid, within or upon any like ground or grounds, as above written, lying or being within any other shire of this realm, upon pain of forfeiture of the said horse or horses, which shall be so found in or upon any such ground, forest, &c.

(By § 3, Horses found, to be measured. By § 4, persons refusing to measure, or not truly measuring, to forfeit 40*s*. By § 5, not to extend to horses breaking, once a year, out of any pasture, and not remaining four days after notice. By § 6, forests, &c. to be driven once a year on pain of 40*s*. By § 7, upon the drift, unlikely tits to be killed.)

By § 8. All stewards of leets and lawdays, shall have authority to inquire of all defaults, contempts, omissions, and offences, contrary to the effects above written; and all presentments thereof, to be found in any of the said leets or lawdays, shall be certified by the steward, or deputy steward, or court-holder, of the same leet or lawday, in the next general sessions of the peace, or unto the *custos rotulorum* of the shire, within 40 days next after that presentment made. And, if any such steward, deputy steward, or court-holder, imbezzle, or conceal, any such presentment, or do not certify the same as is aforewritten, every of them, so offending, shall forfeit and lose, for every offence, 40*s*. (half to the king, and half to the informer, &c.)

*By 8. *Eliz. c.* 8. § 2 and 3. Such horses in the Isle of Ely, and the counties of Cambridge, Huntingdon, Northampton, Lincoln, Norfolk, and Suffolk, need only be 13 handfuls.

By § 9. No person shall have, or put to pasture, any horse, gelding, or mare, infect with scab or mange, in, to, or upon any of the said forests, &c. upon pain to forfeit for every horse, &c. 10*s.*; which offence shall be inquirable and presentable before the steward, in every leet, as other common annoyances be; and the forfeiture thereof to be to the lord of the leet.

By 33. *H.* 8. *c.* 6. ("concerning crossbowes and handguns,") it shall be lawful to all stewards, and bailiffs, in their several leets and lawdays, to inquire, hear, and determine every such offence, to be committed and done contrary to the tenor of this act; so that always no less fine than 10*l.* be assessed upon every such presentment and conviction; the one moiety of such fine to be to the king, and the other moiety, the one half to the owner of the leet, and the other to the party that will pursue for the same. Crossbows and handguns.

By 33. *H.* 8. *c.* 9. Stewards of franchises, leets, and lawdays, have power to inquire of all the premisses [*i. e.* touching the having bows, and shooting therein at buts, &c.], in their leets and lawdays, and hear and determine the same; and also, by their discretion, to examine all persons lacking and not having bows, shafts, and arrows, according to the form aforesaid.

By 2. and 3. *E.* 6. *c.* 10. § 2. No person shall make any barley malt (the months of June, July, and August only excepted), but that the same shall have, in making thereof, that is to say, in the fat, or floor, steeping, and sufficient drying of the said malt, three weeks at the least: and, that no person, at any time, within the said months of June, July, and August, shall make any barley malt, except the same have in Malt.

the fat, floor, steeping, and sufficient drying, the time and space of 17 days at the least, upon pain to forfeit and lose, for every quarter of malt, made contrary, &c. 2*s.* And no person shall mingle, or put together, any malt, not being sufficiently made, or being made of mow-burnt or spired barley, with other good malt, and after put the same so mingled to sale, upon pain to forfeit and lose, for every quarter, so mingled and put to sale, 2*s.*

By § 3. If any person shall put to sale any malt, which shall not be sufficiently and well trodden, rubbed, and well fanned, whereby there may be conveniently fanned out of one quarter thereof half a peck of dust or more, the person, so putting the same to sale, shall forfeit and lose, for every quarter so put to sale, 20*d.*; the moiety of all which forfeitures to be to the king, and the other moiety thereof to the party that will sue for the same.

By § 4. The steward, in every leet, shall have full power and authority to inquire, hear, and determine, as well by presentment, as twelve men, as by accusation or information of two honest witness of, for, and upon, all the offences and forfeitures aforesaid, as well for the king, as for the party that shall sue, procure, or cause the same to be presented.

By § 5. This act shall [not] extend to the making of malt for any man's own provision, for his own house, or family; neither to charge, or be prejudicial to any person, except he shall be sued within one year next after the offence committed. (Revived by 27. *Eliz. c.* 14. and continued by 3. *C.* 1. *c.* 4. and 16. *C.* 1. *c.* 4.)

See 4. *Inst.* where it is said, that stewards, in leet,

may either proceed at the common law, or upon this statute.

By 2. and 3. *E.* 6. *c.* 15. § 1. If any butchers, brewers, bakers, poulterers, cooks, costermongers, or fruiterers, shall conspire, covenant, promise, or make any oaths, that they shall not sell their victuals but at certain prices; or if any artificers, workmen, or labourers, do conspire, covenant, or promise together, or make any oaths, that they shall not make or do their works, but at a certain price or rate; or shall not enterprise or take upon them to finish that another hath begun; or shall do but a certain work in a day; or shall not work but at certain hours and times; every person so conspiring, &c. being lawfully convict thereof, by witness, confession, or otherwise, shall forfeit, for the first offence, 10*l.* or else shall suffer 20 days' imprisonment, and only have bread and water; and for the second offence shall forfeit 20*l.* or else suffer punishment of the pillory; and for the third offence shall forfeit 40*l.* or else sit in the pillory, and lose one of his ears, &c. Conspiracies.

By § 3. All stewards of leets, at all their leets and courts, shall have full power and authority to inquire, hear, and determine, all offences committed against this statute, and to punish, or cause to be punished, the offender, according to the tenor of this statute.

By 7. *E.* 6. *c.* 5. ("to avoid the excessive price of wines,") the steward in every leet shall have full power and authority to inquire, by the oaths of 12 lawful men, of all offences perpetrated or done contrary to the form of this act. Wines.

By 2. and 3. *P.* and *M.* *c.* 8. ("for the mending of highways,") § 2. the steward of every leet or law-day shall therein have full power and authority to Highways.

inquire, by the oaths of the suitors, of all the offences, that shall be committed within the leet or law-day, against every point and article of this estatute; and to assess such reasonable fines and amerciaments, for the same, as shall be thought meet by the said steward. And the steward of every leet and law-day shall make estreats indented of all the fines, forfeitures, and amerciaments, for the defaults presented before him; and shall deliver the one part thereof, sealed and signed by him, to the bailiff and high constable of every hundred, rape, lathe, or wapentake, wherein the defaults shall be presented, and the other part to the constable, and churchwardens of the parish wherein the defaults were made; the same to be yearly delivered within six weeks after the feast of St. Michael the archangel. (For which said estreats (by § 4.) his fee is to be 12*d.*)

Taking of musters. By 4. *and* 5. *P. and M. c.* 3. ("for the taking of musters,") all stewards of leets, law-days, and liberties, at their leets and lawdays, shall inquire, hear, and determine every of the offences committed or done contrary to this act, within the precints of their leet or liberty.

Not charging the jury. By 1. *Eliz. c.* 17. § 10. If any leet be kept, and the steward of the said leet, for the time being, or other for him, do not charge the jury, sworn in such leet, to inquire of all the offences done within the precinct of the said leet, contrary to the tenor and form of this estatute, then the steward of the said leet to lose and forfeit 40*s.* the one moiety to the queen's majesty, and the other to him that will sue for the same.

High-ways. By 18. *Eliz. c.* 10. ("an act of additions unto the former acts, for amending and repairing of high-ways,") stewards of leets and lawdays, in their leets

and lawdays, shall hear and determine every offence, matter, and cause, that shall grow, come, or rise, by reason of this statute.

Pheasants or partridges.

By 23. *Eliz. c.* 10. § 2. No manner of person shall take, kill, or destroy, any pheasants or partridges, with any manner of nets, snares, gins, engines, rowsting, lowffing, or other devices, in the night-time; upon pain of forfeiture, for every pheasant, 10*s.* and for every partridge, 10*s.* *(with other penalties.)*

By § 5. Stewards of leets, liberties, and lawdays, within their several jurisdictions, shall, by virtue hereof, hear, inquire, and determine, all offences, which shall be committed within the precinct of their liberties, jurisdictions, or franchises, against the tenor of this act.

Tanners, &c.

By 1. *J.* 1. *c.* 22. ("concerning tanners, curriers, shoe-makers, and other artificers, occupying the cutting of leather,") § 50. all stewards of franchises, leets, and lawdays, within their several precincts, jurisdictions, and liberties, shall inquire of all the premisses in their leet or lawday, and hear or determine the same, and also, by their discretions, examine all persons suspected to offend this act.

Fees.

By 2. *J.* 1. *c.* 5. No steward, deputy-steward, or other under-steward, of any court leet, or court baron, shall take, receive, or make benefit to his own use, in money, goods, or other thing, to the value of 12*d.* or more, by virtue or colour of any demise, or grant to be made, of any of the profits, or perquisites, or amerciaments, of any such courts, whereof they are steward, which rightfully shall belong to the lords of the same (penalty 40*l.* and disability).

Horse-bread.

By 21. *Ja.* 1. *c.* 21. § 2. No hostler, or innholder, shall make horse-bread in his hostry, nor without;

but bakers shall make it; and the assise shall be kept, and that the weight be reasonable, after the price of the corn and grain in the markets adjoining; and the hostlers, or innholders, shall sell their horse-bread, and their hay, oats, beans, peas, provender, and also all kind of victual, both for man and beast, for reasonable gain, having respect to the prices for which they shall be sold in the markets adjoining, without taking any thing for litter.

By § 3. It shall be lawful for every hostler and innkeeper, dwelling in any town or village, being a thoroughfare, or a common passage, and being no city, town-corporate, or market-town, wherein any common baker, exercising the occupation of baking, and that hath been apprentice at the said occupation, by the space of seven years, is [not] dwelling, to make within his house horse-bread, sufficient, lawful, and of due assise, according as the price of grain and corn shall be.

By § 4. If the horse-bread, which any of the said hostlers or innholders shall make, be not sufficient, lawful, and of due assise, according to the price of grain and corn; or if any of them shall offend in any thing contrary to this act, stewards, in their leets and lawdays, shall have full power and authority to inquire, hear, and determine, the said defaults and offences of the said hostlers and innholders. And the hostler or innholder, for the first offence, shall be fined according to the quantity of his offence; and if, being once convicted, he shall again offend, for the second offence, he shall be imprisoned for the space of one month; and, if he shall a third time offend, being thereof convicted, he shall stand upon the pillory; and if he shall offend after the judgment of the pil-

lory given, he shall be forejudged for keeping any inn again*.

Mandamus lies to restore the steward of a leet. 1. *Sid.* 169. 2. *Sid.* 112†. *Mandamus.*

The court granted an information, in nature of a *quo warranto*, against the defendant, for exercising the office of steward of a court leet. 1. *Strange*, 621. *Quo warranto.*

Grant of the *reversion* of the *office* of steward of a manor is void. Nor would a grant of the *office*, and not of the reversion, *to hold from the death of such a one*, be good; otherwise in the king's case. *q. Dyer*, 259. *Reversion.*

If a steward does not hold the courts, or does not hold them for the profit of the lord, it is a forfeiture of his office. Per *Chocke*, 5. *E.* 4. 26. *Br. Forfeiture de terres, pl.* 54. *Forfeiture.*

It is requisite that the steward of this court be learned in the law, for *ignorantia judicis est calamitas innocentis.* See *Rot. Parl.* 51. *E.* 3. *nu.* 49. concerning taverners. 4. *Inst.* 265. *Requisites.*

The want of an able steward, to discharge the office, is a cause of seizure. 1. *Jones*, 283, and

Note, by *Holt*, chief justice of *B. R.* the steward of a court leet ought to be a barrister at law. *Scroggs*, 33.

* Leet had the like power, by 32. *H.* 8. *c.* 4. 1. (rep. by this act.)

† Agreed by all, for that his place tends to the administration of justice. 1. *Sid.* 169; and *Twisden, J.* (in another case) said, it was so ruled in 1652, in *B. R.* 1. *Vent.* 153. The court it seems, at one time, entertained a doubt of this point. 1. *Sid.* 40. but, even then, they inclined that the writ lay. *Raym.* 12. Though *Holt*, long afterwards, said he would not care to grant it. 12. *Mod.* 666.

CHAP. VIII.

OF THE JURY.

Offences out of court.

Of offences done out of court the jurors of the leet have conusance, and therefore power to present them, and to assess an amerciament for them. 8. *Rep.* 41. *Griesley's case* *.

Stranger.

If a man ride along the road, and the steward in leet want jurors, he may compel him to be sworn. 7. *H.* 6. 12. *Br. Leete,* 14. 12. *H.* 7. 15. *Br. Leete,* 24.

Mandamus.

The rector of Wigan claimed, as lord of the manor, to hold a court leet, at which the in-burgesses of Wigan ought to attend, to make a jury, which they having refused, and neglected to do, at two courts, whereby no business could be done, the court granted a *mandamus* to enforce their attendance. 2. *Strange,* 1207.

Refusing to be sworn.

In leet, or the sheriff's tourn, if a man will not be sworn, he shall make fine, and the lord may imprison him till he has made fine; and he may amerce him, and distrain him for the amerciament. *M.* 31. *H.* 6. *Statham, Tourne de Vic. Fitz. Lete et Hundr.* 11.

If a juror at the bar will not be sworn, the steward may assess a fine upon him, or may put him in prison at his election. 7. *H.* 6. 12. *b.*

* By 29. *G.* 2. *c.* 25. *ss.* 12, 13, 14. The annoyance jury of Westminster is authorised to *amerce* persons for nuisance, bad pavement, defective weights, &c. and *s.* 18. directs the application of *all amerciaments set and imposed by the annoyance jury.* See further, cc. x. xi. xiii.

If any of the jury give their verdict to the court before they are all agreed of their verdict, they may be fined. 40. *Ass.* 10. 1. *Roll. Abr.* 219. Some giving verdict before all agreed.

If one of the jurors, in a leet, departs without giving his verdict, he shall be fined by the steward; as appears in the book of entries. Title, *Amerciament in debt*, fol. 149. *Et sic de similib'.* 8. *Rep.* 38. *b.* Departing without giving verdict.

If a tithingman refuses to make a presentment in a leet, the steward shall set a reasonable fine upon him; as it is held in 10. *H.* 6. 7. *a.* 8. *Rep.* 38. *b.* Refusing to present.

If a jury in a leet, after an oath made to present the articles of the leet, refuse to make presentment, according to their oath, the steward, who is judge there, may assess a fine upon each of them, at his discretion, for the concealment and contempt. *Dyer*, 211. *b.*

And such fine must be several, and cannot be joint: for the offence is several, and the refusal of one is not the refusal of another, &c. 1. *Roll. Rep.* 73. 75. 11. *Rep.* 42. *b* *.

Although it be so, that the bailiff cannot hear and determine any action at the tourn; nevertheless, if any present be grieved by any wrongful presentment, and complain thereof, or if the bailiff have a suspicion that the jurors be in any case perjured, by concealment Jury to inquire of concealments.

* The steward at a court leet, time out of mind, had used to swear 12 or more inhabitants to be chief pledges; and they, at every leet, being sworn, had used to present, that they, the said chief pledges, should pay to the lord of the manor, for head-money, or *pro certo letæ*, 10*s.* and to pay it accordingly at the same leet. The 12 chief pledges being sworn to inquire, &c. refused to make such presentment; whereupon the steward, for the contempt, imposed a fine of 6*l.* upon them all jointly; but resolved, that the same should have been imposed severally, *causa qua supra.* 11. *Rep.* 42.

of any offence presentable, or of any offender, it is lawful for the bailiffs, by twelve more discreet men, to inquire of the truth thereof without delay; and, although that the last jurors say, that the first are perjured, nevertheless, because that no witness or juror is attaintable with less than two jurors, and because the latter jury is only taken in the office of the bailiff, and not in the manner of an attaint, the first jurors are not held for attainted, but are simply amerced. *Mirror, c.* 1. § 17.

Borsalders do not present nuisance; and, by usage of the leet, 24 sworn to inquire, who find, and the borsalders amerced for their concealment. 17. *E.* 2. 520, 521.

Note. Where it was alledged for custom, that if verdict be made in his leet by twelve, and this be found false by the grand inquest, that the petty jury shall be amerced; and *tota curia* held, that this is not custom but extortion, for the verdict of the one twelve is intended in law to be as good as the verdict of another twelve; but, if the custom had been of concealments, this is good. 27. *H.* 6. 10. *Br. Customes.* 3. See also 9. *H.* 6. 44. *Fitz. Custome.* 1. *S. P.*

Concealing, or not presenting.

By 1. *Eliz. c.* 17. § 10. If any jury, sworn in any leet, and being charged to inquire of the offences committed within the precinct of that leet, do wilfully and willingly conceal and make default in presentment, or do not present the offence and offenders, it shall be lawful to the steward or bailiff of the leet, or his deputy, for the time being, to impanel one other jury within the said leet, and to inquire of such concealment, default, or non-presentment; and that, upon such concealment, default, or non-presentment, found and presented, every of the said ju-

rors, which so did conceal, make default, or not present, shall lose and forfeit, for every such offence, 20*s.* to the lord of the said leet, the same to be levied in manner and form as is abovesaid, for the other offences limited and expressed. But *q.* whether this clause intend other offences than those against the statute.

Protection. *Andrews* shewed to the court, that, in such a place, at a leet there held for the king, one of the jurors, sworn to inquire for the king, was arrested by one of the officers of the marches of Wales; and thereby the king's court was disturbed; and inasmuch as *B. R.* was the fountain of all leets*, he prayed the aid of this court to punish the offence, and had affidavit of the matter, wherefore he prayed an attachment; and it was denied him. But if an officer of this court had done it, &c. then this court had had ground to grant the motion. But the court advised him to file an information against the officer, for this disturbance to the leet, which he said he would do. *Latch.* 198.

* *Quære*, the propriety of this compliment, since it is very certain, that leets existed long before the *curia regis*, of which *B. R.* is but a part.

CHAP. IX.

OF PRESENTMENTS.

Sealing. The presentments are to be sealed with the seals of the jurors, so that none may do fraud by increasing or diminishing them. *Mirror*, c. 1. § 17.

It is not necessary, that a presentment in the leet should be either sealed or indented. 3. *Burr.* 1860.

Day on which court is held. It ought to appear in the presentment, on what day the court was held. 2. *Saund.* 291. 1. *Vent.* 107.

Coram seneschallo. Not saying the court was holden *coram senescballo* is informal. 3. *Keble*, 351.

Coment or *quo jure.* In a presentment, in a leet, it is not necessary to shew *coment* nor *quo jure* the court is held, whether by grant or prescription. 1. *Salk.* 200.

Certainty. Presentments in leet ought to be certain, viz. to shew at what place the nuisance is made, and to say within the jurisdiction of this court: for it is the declaration of the king, which ought to be good to every common intent; and, if it be nuisance to other land, they ought to say certainly where the nuisance is, &c. and where the land lies to which it is done. 5. *H.* 7. 2. *Br. Leete*, 33.

Ad nocumentum diversorum. A presentment in leet of a manor for not scouring ditches, *ad nocumentum diversorum*, &c. is ill; and should be *ad commune nocumentum.* 3. *Keble*, 106. *pl.* 12.

Ad nocumentum inhabitantium. Plaintiff left his gates open *ad nocumentum inhabitantium*; and adjudged, that this is not amerciable in the leet. *Moor.* 356.

Presentment in leet for keeping a common glass-house, because not *ad commune nocumentum*, quashed. 2. *Keble*, 500. Glass-house, *ad commune nocumentum.*

Presentment of one at the leet for digging coney-burrows, and breaking the soil in the waste, because not *ad commune nocumentum*, quashed. *Raym.* 160*. Coney-burrows, *ad commune nocumentum.*

Ad nocumentum legiorum regis (or *ad commune nocumentum*) ought to be in every presentment; and the fault (the want of those words) incurable. *Cro. Jac.* 382. *Ad nocumentum legiorum regis, &c.*

Indictment [*l.* presentment], in leet, of stopping common highway leading from &c. wanting place where stopping, quashed. 3. *Keble*, 644. *pl.* 86. Place where wanting.

Presentment, at a court leet, for not repairing a certain pair of stairs, leading to the Thames; and *Shower* moved to quash it *(for divers informalities)*: but the court would not quash it, because it was for not repairing the highway. 2. *Show.* 455. Repairing [stairs and] highway.

Sanders excepted against an indictment, in a leet, for stopping a common highway, leading from a place called Up-End, which cannot be; for every highway ought to be from some public place. But, *per totam curiam*, this may be well enough; but, wanting a place where stopping, it was quashed. And, so likewise was another presentment, for digging turf in the lord's waste, being but a private nuisance. 3. *Keble*, 644. Stopping highway. Digging turf in the waste.

Agmondesham brought a writ of rescous against Diverting royal way.

* Presentment, in the leet, for digging coney-burrows, although concluding *ad commune nocumentum*, quashed. 2. *Keble*, 139.

It is doubtful, whether the objections to those two presentments were to the form only, or to the offence itself, as not inquirable, &c.

Cornwallis; and it was grounded upon a presentment, in a leet, which was, that the said Cornwallis had *diverted* the royal way within the leet, to the nuisance of the queen's people, amercement and distress for it, and rescous made; upon which, demurrer being made, the court agreed that the presentment was void; because a *way royal* cannot be diverted. But this word "*diverted*" may tend to the course of water, which may be diverted, and a way may be obstructed; but that is not diverted which is stopped, and other way made in another place. *Anderson*, 234.

Things done before the last court.

Presentment of a thing, done before the last court, is of no force. *Keilwey*, 66, *b**.

* That which cannot be redressed there (*s.* in leet) by the presentments [of the jurors] is presentable at the sheriff's first tourn; and that, which the sheriffs cannot redress, is to be presented by the sheriffs to the exchequer. *Mirror*, *c.* 1. § 17.

Things not presented, in the leet, shall be presented in the sheriff's tourn; and, for default there, in the King's Bench, when it comes into the country; and process shall not be made against the party upon presentment in leet, *contra* in *B. R.* 41. *E.* 3. 26. *Br. Leete*, *pl.* 4.

If a common nuisance, &c. done within the jurisdiction of the leet, be not presented in the leet, the sheriff in his tourn cannot inquire of it: for, that which is within the precinct of the leet is exempt from the tourn, otherwise there might be a double charge; but, in that case, a writ may be directed to the sheriff to inquire thereof, &c.: against the opinion of Fineux, in 12. *H.* 7. [18.] if his opinion be not misreported. And by the book of 29. *E.* 3. [21.] this writ is not taken away by the statute of 28. *E.* 3. *ca.* 9, made the year before, which was fresh in the judge's memory. 4. *Inst.* 261.

CHAP. X.

OF FINES AND AMERCIAMENTS.

By *Mag. Char. c.* 14. A freeman shall not be amerced for a small fault, but after the manner of the fault; and, for a great fault, after the greatness thereof, saving to him his countenance *(contenementum suum)*; and a merchant, in the same manner, saving his merchandise, and the villain of another, shall be amerced in the same manner, saving his wainage, if he should fall into our mercy. And none of the aforesaid amerciaments shall be assessed, but by the oath of honest and lawful men of the vicinage. Earls and barons shall not be amerced, but by their equals, and only according to the manner of the fault. No ecclesiastical person shall be amerced, but according to his lay-tenement, and the quantity of his fault. *Secundum quantitatem delicti, &c.*

The statute, in this particular, is but an affirmance of the common law. 8. *Rep.* 39, *b.* 2. *Inst.* 27.

By *W.* 1. *c.* 6. No city, borough, nor town, nor any man, shall be amerced without reasonable cause, and according to the quality of the trespass; that is to say, a freeman saving his countenance *(contenementum)*, a merchant saving his merchandise, a villain saving his wainage, and that by their peers. Cause and quality.

The statutes of *Magna Chârta* and *Westm.* 1. extend to amerciaments, and not to fines. 8. *Rep.* 39. *b.*

An amerciament, in Latin, is called *misericordia*; Affeer-

ment. *De moderatâ misericordiâ.*

because it ought to be assessed mercifully*, and this ought to be moderated by affeerment of his equals, or otherwise a writ *de moderata misericordia* lies†. *Co. Lit.* 126. *b.* 1. *Roll. Abr.* 211.

Assessment.

Fine is assessed by the judge of the court, as by the justices of the court, steward in leet, and such like; but amerciament is assessed *per pares suos.* 7. *H.* 6. 12. *Br. Amerciament*, 65. *Fines pur Contemptes*, 44.

Trespass for breaking a house, and taking and carrying away a *hancup* of silver. Defendant justified for a fine of £5, imposed by the steward of a court leet, for these words spoken to the steward of the court leet, *ipso tunc judicialiter sedente, viz.* that the house, in which the court was held, was the house of the mayor of Chipping Sudbury; and, that John Skinner, then and there being present, had greater right to be there than the steward; and, that if he was mayor of Chipping Sudbury, he would not permit the court to be held there. The plaintiff replied, that the house was the tourn-hall, that Skinner was then mayor, and plaintiff a free burgess; and that he *quiete et pacifice*

* Rather because the party is *at the king's mercy*, or, as it is sometimes called in ancient statutes, his *grievous* mercy.

"It is likely there was some difference between a *misericordia* and an *amerciament.* For example, it was called an *amercement*, after it was reduced to a certain sum; and a *misericordia* both before and afterwards." *Madox's History of the Exchequer, p.* 365.

† *Nota.* If excessive amerciament or fine be assessed in the leet, by the jury, or by the steward, no *moderata misericordia* lies; for this writ is given upon amerciament in court baron, and not in court of record as leet is. *Vide Fitz. Na. bre.* 75. *Crompton of Courts*, 225. *b.* See also 1. *Bulstr.* 125. *post.*

The writ of *moderata misericordia* lieth in case where a man is amerced in a court baron, or other court which is not a court of record, outrageously for trespass, or other offence. *F. N. B.* 75.

dixit the words. Upon demurrer, the plaintiff had judgment *per totam curiam*; for no such fine ought to be imposed upon the said words. 2. *Jones*, 229.

By the justices, that which is assessed on the minister of the court is called amerciament*, and not fine. But, where stranger to the court makes misprision, and shall make amends, there that which is assessed upon him is called fine, and not amerciament. 5. *E.* 4. 5. *Br. Amerciamentes*, 45.

An amerciament is the act of the jury, and ought to be assessed by the country, but a fine is the act of the court. *Palmer*, 7.

Amerciament ought to be by the court, and not by the jury. 2. *Strange*, 847. *Stephens* v. *Haughton*. *Fitz. Gib.* 109. S. C.

Amerciament must be by twelve. 3. *Keble*, 362. *(pl.* 42.*)* Twelve.

It is an abuse to amerce any man by a presentment made of less than twelve freemen sworn. *Mirror*, *c.* 5. § 1.

A fine, assessed by a steward, in a court leet, for not coming to court and doing suit, is not warrantable, without a presentment that he ought to do suit at court; but, in such case, he shall rather be amerced than fined. For Anderson said, that, for such offences as are within the conusance of the steward, as judge, Suitors.

* See, in *Rastall's Entries*, 149, a declaration in *Dette sur Amercement in Lete*, which was a fine set by the steward, upon a chief pledge, for refusing to present, &c. This kind of amerciament is sometimes called *amerciament royal*, as being imposed by the immediate authority of the king's judge, to distinguish it from the amerciament of the country. *Vide* 2. *H.* 7. 7.

and of which he hath the view, he may assess a fine; but not of others unless presented, and *non constat* to the steward if resident or not, or what cause he had for his absence. *Cro. Eliz.* 341. *Hall* v. *Turbett.*

Pain. A court, which hath power to fine, may command the people to keep silence upon a pain. 7. *H.* 6. 12. 1. *Roll. Abr.* 219.

Prescription, in leet, for every affray or bloodshed, to pay so much; and to distrain for it, and sell the distress, is good; for it is the king's court. 11. *H.* 7. 13. 14. *Br. Prescription,* 106.

On public nuisance, a pain may be set on default of abatement of the nuisance by a day. 2. *Keble,* 613.

It is good policy to make an order, with a pain in a leet, that no person shall receive any such tenant as shall be chargeable to the parish; but, clearly, the steward cannot amerce one for such a cause, without an order, with a pain made before. *Lane,* 56.

CHAP. XI.

OF AFFEERMENT.

THIS word, *affeerer*, is as much as to say, *ponere in certitudinem, seu taxare, scil.* to assess or tax; and the affeerance is as much as to say assessment or taxation; and affeerors are assessors or taxers, and are derived from this ancient French word, *afferer*, which signifies *taxare*, &c. 8. *Rep.* 39. Explanation. Etymology.

It is an abuse to put an amerciament uncertain certain, without the affeerment of freemen sworn to it. *Mirror*, c. 5. § 1.

Amerciament, in the leet, presented by the jury, shall be affeered by two affeerors, contrary of amerciament assessed by the steward in the leet, by the best opinion. For this is in the nature of a fine; and affeering comes by the statute of *Magna Charta*, which says, *quod nemo amercietur nisi secundum quantitatem delicti*, which cannot be known but by affeering, *quod nota.* 10. *H.* 6, 7. *Br. Amerciament*, 50. Amerciament. Fine.

All fines, in a leet, may [must] be assessed by the steward, and all amerciaments by the affeerors. *Keilwey*, 65.

Fine imposed by the steward well enough without any affeerance, and therefore a difference between a fine and an amerciament; for a fine is always imposed and assessed by the court; but an amerciament (in Latin *misericordia*) is assessed by the country. 8. *Rep.* 39. *Griesley's Case.*

The amerciament ought always to be assessed by the court; for it is a judicial act, and shall be affeered by the affeerors appointed. (See *Old Book of Entries*, 507. *New Book of Entries*, 119.) *Cro. Car.* 275. *Gryffith* v. *Biddle.*

Certainty. Agreed, that amerciaments are to be affeered, unless they are in nature of fine; and, that there is no occasion for an affeerment, but where the amerciament is discretionary; but, where the sum is ascertained by custom, and the steward [*l.* affeerers] cannot increase or dimir ish it, the amerciament ought not to be affeere , (1) because it is in nature of a fine for a contempt; (2) because the custom hath ascertained it, and it is not discretionary. 8. *Mod.* 301.

Jury. If a jury, in a leet, taxes an amercement, it is good without other affeerment, for the amerciament is the act of the court, and the affeerment, of the jury. 8. *Rep.* 40. *Griesley's Case.* For, when they are judges of the default, they also are judges of the amercement, and of the pain to be inflicted for the default. *Savile*, 94. *S. C.*

The jurors cannot ascertain the fine, but only the affeerors. 2. *Keble*, 613.

The jury must amerce to a certain sum, which may be mitigated and affeered by others, and therefore these offices cannot be confounded. *Hob.* 129. 3. *Lev.* 206.

Cur. The amerciament ought to be general, *quod sit in misericordia*; and that is to be ascertained by affeerors. 1. *Salk.* 56.

Holt and *Eyres.* The amerciament ought to be the act of the court, and the affeering to be by the jury: the jury cannot amerce; the case in *Hobart*, 129, is not law. *Dolbin.* The jury do amerce, and there are

affeerors particularly for that purpose appointed. If the jury amerce (says *Holt*) to a particular sum, then there is no need of an affeerment. *Show.* 62.

The jury may amerce in a certain sum, if they will, and then there needs not any affeerment; though the proper way is *ideo sit in misericordiâ*, and then an affeerment. 11. *Mod.* 76.

The affeerment ought to be by officers elected by the steward; and not by the jury *. 3. *Lev.* 206. Election.

And this affeerment should be in open court, for It is an abuse to affeer amerciaments in the absence of the persons amerced. *Mirror*, c. 5. § 1 †. Open court.

If the steward affeers an amerciament upon the presentment of the jury, it is void, and shall not bind. 8. *Rep.* 39. *b.* *Griesley's Case.* Steward.

If pain be set upon a man, in the leet, for the redressing of a nuisance against such a day, under pain of 10*l.* and afterward it is presented that he hath not done it, and shall forfeit the pain, it is a good presentment; and the pain shall not be otherwise affeered, and the lord shall have action of debt clearly, but he cannot distrain and make avowry, unless by prescription. 28. *H.* 8. *Br. Leete*, 37. Pain.

* *i. e.* Not by the jury at large, and *quasi* jury; but well enough if two or three of the jury be, after presentment, made specially sworn to *affeer;* and such is the constant practice. It is indeed necessary it should be so, as few, besides the jury, who have the view, &c. are sufficiently acquainted with the nuisance, or other matter of the presentment. This, however, was not the case anciently, when all the resiants attended in person, nor may be at present in some leets.

† On the other hand, where the affeerors ought to be chosen with the assent of the persons amerced, and in a common place, the lords make the affeerors come to their houses to affeer the amerciaments, at their will. *Mirror*, c. 5. § 2.

CHAP. XII.

OF THE REMEDY FOR FINES AND AMERCIAMENTS.*

Distress. NOTE. By all the justices of the common bench, distress is incident to an amerciament in a lawday. 9. *H.* 7. 22. *Br. Distresse*, 45.

Distress, as well for amerciament as for fine, incident of common right. And the lord may distrain and sell, or distrain and pound, at his pleasure. 8. *Rep.* 41. 41. *b. Griesley's Case. Sav.* 94. *S. C.*

For debt of the king, distress shall be sold within xl. (*l.* xv.†) days; and, by *Fairfax*, the lord of a leet,

* By 1. *Ed.* 4. *c.* 2. Sheriffs, and their under-sheriffs, clerks, or bailiffs, and their ministers, shall bring, present, and deliver, all indictments and presentments, taken before them in their tourns or lawdays, to the justices of peace, at their next sessions of the peace, that shall be holden in the county or counties, where such indictments or presentments shall be taken. And the said justices of peace shall have power and authority to award process upon all such indictments and presentments, as the law doth require, and in like form, as if the said indictments and presentments were taken before the said justices of peace, in the said county or counties; and also to arraign and deliver all such persons, so indicted or presented, before the said sheriffs, &c. in their tourns or lawdays: and all such persons, which be indicted, or presented of tresspass, shall make such a fine as shall seem lawful, by their discretions; and the estreats of the said fines and amerciaments shall be enrolled, and, by indenture, be delivered to the said sheriffs, &c. to the use and profit of him that was sheriff in any county, at the time of the said indictments and presentments taken. See *Cro. Car.* 275.

† This misprint is copied both by *Viner* and *Blackstone*. See the *Stat.* 51. *H.* 3. *De Districtione Scaccarii.*

of the king's grant, may do the same, for this pre-eminence goes with the leet. 3. *H.* 7. 4. *Br. distresse,* 72.

Common person, who hath leet, may sell the distress taken for offence presented in leet, as the king may, for it is the king's court, although it be in the hands of a common person. 3. *H.* 7. 4. *Br. Leete,* 20. *Distresse.* 40.

The lord of a leet may distrain for a pain for a fine, and also he may have action of debt. *Keilwey,* 66, *b.* (See also, *Br. Leete,* 37. *supra.) Br. Ley Gager,* 99. *infra.* Action of debt.

Debt lies in the bench of amerciament, assessed in leet, *per optimam opinionem; tamen quere quia non multum arguitur.* 10. *H.* 6. 7. *Br. Dette,* 179*.

Debt will lie for an amerciament in a court leet; but then the declaration ought to set forth, that the defendant was an inhabitant, as well at the time of the amerciament as of the offence; but this will be cured by the verdict, for it must be proved at the trial. *Wicker and Norris,* 8. *G.* 2. *Buller's Nisi Prius,* 167.

Note. In this case the defendant may traverse the fact of the presentment. *Carth.* 74. *Ibi.*

A man may prescribe for amerciament in leet, to distrain and sell the distress; for that it is the king's court. and the party derives his interest from the king; and, although the party have it by grant or prescription, still it is the king's court. 21. *H.* 7. 40. Prescription. Distress.

If a man prescribe to have lawday, and his tenants

* See in *Rastall's Entries,* a declaration in debt, for an amerciament of 4*l.* set, by the steward, upon one of the chief pledges, for departing from the court without having given his verdict. *Dette.* 151.

make default, they shall be amerced, and for the amerciament he shall distrain; and the prescription well saith, that he and all, &c. have used, from time, &c. to distrain for this amerciament; for distress is incident to such amerciament. 9. *H.* 7. 22. *Br. Prescription*, 61.

By-laws. Leet may make by-laws to bind themselves, and may, by prescription, distrain for the amerciament, and the lord may sell the distress; for the king may do so, and the leet is to the king, although the lord hath the profits; for all justice is in the king. 21. *H.* 7. 40. *Br. Leete*, 34.

For amerciament, in a leet or hundred, a man may distrain the beasts of the offender, in any place within the leet or hundred. 2. *H.* 4. 24. *Br. Leete*, 28.

Where a man is amerced, in a leet, for harbouring W. for a year and a day, that he was not sworn in the dozein, &c. for such amerciament, he can distrain only such beasts as were the proper beasts of the receiver who is amerced; for this is by reason of his person; otherwise, where the cause of distress arises *ratione soli.* 41. *E.* 3. 26. *Br. Leete*, 4.

Custom. Where *custom* only (and not common right) enables the leet to set a fine, it cannot be distrained for, without custom also. (*Vent.* 105.) and see *Raym.* 204.

Certum Letæ. *Certum letæ** is against common right, and for the private advantage of the lord of the leet, which the

* *Certum letæ, capitagium*, or chief silver, is a certain rent or sum, payable, by custom, at the leet day, by the chief pledges of the decennary, which payment is said to have had the following origin, *scil.* when the lord purchased and acquired the leet, for the ease of the resiants therein, so that they need not go to the sheriff's tourn, but do their suit real at the lord's leet; also the lord of a leet was at every eyre

lord cannot have without prescription; and, therefore, as he ought to prescribe in the principal, so he ought to prescribe in the distress. 11. *Rep.* 44. *b.* and 1. *Roll. Rep.* 73. 75. 76.

Where the duty is created by custom, as *pro certo letæ*, there must be a custom for the distress; but where the thing is incident to the leet, there needs no custom for the fine. 2. *Keble*, 701.

Bailiff, without special warrant from the steward, cannot distrain for amerciament in leet. *Moore*, 607. 574. Bailiff.

Popham said, that defendant, as bailiff of the manor, cannot distrain for amerciament, by reason of his office, without an especial warrant from the steward or lord; no more than a sheriff may levy amerciaments in *B. R.* without warrant. But *Gawdy, e contra*, that he may distrain for lawful amerciaments, by reason of the office. *Cro. Eliz.* 698.

Bailiff cannot distrain, *ex officio*, for amerciaments. *Cro. Eliz.* 748.

Bailiff cannot distrain for amerciament, by command of the lord of the manor, or otherwise than by the precept of the steward of the court directed to him. *Carth.* 75 *.

obliged, at his own costs, to claim the franchise, &c. 6. *Rep.* 77. *b.*

This account of the origin of the *certum letæ* is altogether imaginary. The fact is, that it was a composition or common fine, to excuse all the suitors, but the chief pledges, from appearing at the leet. *Brancaster. Leta ibidem anno regni regis Edwardi filii regis Edwardi, secundo. De capitagio ne vocentur per capita dant* xiiis. ivd. Again, *A. R. R. E.* 3, 37. *De to sa villatâ de communi fine ne vocentur per capita*, xiiis. ivd. *Spel.* v. *Capitagium.*

* It is an old rule of the duchy court, that the bailiffs, of the liberties of the duchy, may distrain for fines and amer-

Officer levying punishable or not.

Where an amerciament is levied, by process awarded upon a presentment in a leet, which is insufficient, he who levies the amerciament is punishable by writ of trespass; for the presentment shall be taken as a thing merely void, for as much as the party had no day or time to abate the presentment, by way of plea. (By *Frowike*, and *dub.*) *Keilwey*, 52.

The officer, who levies the amerciament, by process and commandment of the court, shall never be punished; forasmuch as he doth it by authority, and by colour of justice. *Keilwey*, 66. *b.*

By-law. Process out of the exchequer.

At a court leet, held *pro rege*, within the honor of Grafton, one was fined 20*l.* according to a by-law, for the payment of 5*l.* a-month, by every one within the leet, that should receive or place an inmate within any house there, without giving security to the overseers of the parish to discharge the parish; and this fine was estreated hither [*sc. in scac.*], and process issued to levy it. *Hale*, chief baron: this is a good by-law, and frequent in leets; but it is hard to estreat the fine hither, without taking the usual remedy for

ciments for the king, and keep the same 15 days; and, if the party distrained refuse to pay his fine or amerciament, then the bailiff may sell the same, unless the party distrained will enter into bond, to pay the said fine or amerciament, at a day prefixed in the duchy court, or else shew good cause; but, in this case, there is no replevy to be granted against the king. And all this, it seemeth, the bailiff shall do *ex officio*. The fines and amerciaments, within the liberties of the duchy are, however, usually levied by process of *levaria facias*, out of the duchy court. And, by *Keble*,

Precept to bailiff, by *nude parol*, is as effectual in court *baron*, as by writing; because the trial shall be all *per Pais*, and not by record; for all is but matter *in fait*. *Quod fuit concessum*. 16. *H.* 7. 14.

it by distress, and to extend the party's lands upon it, when, perhaps, he may have something to plead to it---as that he is not within the leet, or that he received no inmate; but the officers of the court said, it was usual to estreat such fines into the exchequer, when they belonged to the king; otherwise, when they belong to subjects; and thereupon the party was put to plead. *Hardres*, 471.

CHAP. XIII.

PLEADINGS.

TRESPASS upon the case, by *Abbot* against *Prior*;--- the plaintiff prescribed in a leet, at B. *tenend' semel in anno, s. tali die post pastham*, and that his steward came to hold the leet, and the defendant disturbed him, and the defendant said, *protestando*, that he is lord of the vill, and that the plaintiff hath not such leet there, and that he and his predecessors, *de tempore*, &c. have had leet there *semel in anno, s. post Michel' tali die*; and, *pro placito*, that the plaintiff had leet there at Easter; and, that the plaintiff, and his predecessors, have used to warn the defendant, and his predecessors, 15 days before the leet, and that his bailiff shall be with the plaintiff's steward, if he will; and, that he, and his predecessors, have had amerciaments of their servants, bakers, and brewers; and, that the plaintiff's steward shall deliver the estreats to the defendant, and that he had thereby collected the fines

and amerciaments *de tempore*, &c. and that, if they would hold the leet in another manner, that the defendant, and his predecessors, have used to disturb the plaintiff, and his predecessors, &c. and for this, that the defendant, or his bailiff, were not warned for 15 days before, &c. he disturbed him, &c. And by *Prisot*, the defendant ought to traverse the taking of the entire profits of the leet; for the plaintiff alledges, that he has had the profits, and the plaintiff may maintain that he hath had leet, &c. by reasonable warning of three or four days, without this, that he had warned the defendant for 15 days, *prout*, &c. *et adjournatur.* 38. *H.* 6. 16. *Br. Action sur le case.* 75.

Suitor. *Rescous.* Plaintiff declared for amerciament, for not coming to his leet, such a day, &c. and defendant prescribed that burgess shall come to leet; and, that servants shall be sworn before the constable and portreve, and shall be for this excused, *et non allocatur*; for, every one, who inhabits within the precinct of the leet, shall come to the leet; and, every man shall be within some leet, and neither constable nor portreve hath authority to hold a leet. 2. *H.* 4. 15. *Br. Leete*, 10.

Constable. In replevin, the defendant avows for distress for pain assessed in leet, for not serving there as constable, nor finding sufficient deputy, according to the custom, that he that is chosen must serve *per se* or another; and the presentment is, that the plaintiff should find sufficient person to serve for him, not giving him liberty to serve himself; for which cause *Jones*, for the plaintiff, demurred. Judgement for the plaintiff. *nisi.* 1. *Keble*, 416.

Manus regis. *Replevin.* Defendant made conusance, as bailiff of the bishop of London, for amerciament in leet, for not

cleansing his ditches; and plaintiff said, that before the taking the same land, where, &c. was seized in to the hands of the king; and, therefore, by *Finch*, he cannot distrain, during the possession of the king; for, during that time, it is out of his jurisdiction, and there is no need for him to shew the cause of the seizure. 47. *E.* 3. 12. *Br. Leete*, 8.

Replevin for taking of five oxen. The defendant makes cognisance, as bailiff to the lord of the leet, because the plaintiff was amerced there, for not scouring a ditch in an highway; and the plaintiff demurred, because the statute of 18. *Eliz.* c. 9. gives the forfeitures for highways to the surveyors of highways; but adjudged by all the justices for the defendant, because the party may be punished in the leet, and also by this statute, for divers causes. *Raym.* 250. Scouring ditch.

Trespass for taking beef; the defendant pleads a custom to choose supervisors of victuals, at a court leet; that he was there chosen, and, having viewed the plaintiff's goods, found the beef to be corrupt, which he took and burned. The plaintiff demurs, for that the custom is unreasonable, and, when meat is corrupt and sold, there are proper remedies at law, by action on the case, or presentment at a leet. 9. *H.* 6. 53. 11. *Ed.* 3. 4. 6. *Vide Stat.* 18. *Eliz. cap.* 3. But the court held it a good custom, and judgment was given for the defendant, the chief justice being not clear in it. 2. *Mod.* 56. Custom.

Debt for amerciament in leet, assessed by the steward upon the tithingman, for that he was not present, the best opinion [was] that the defendant cannot wage his law. 10. *H.* 6. 7. *Br. Ley Gager*, 99. Wager of law.

Afferatum, not said by whom, nor *ad eundem curiam*, is ill. 3. *Keble*, 362. *Afferatum.*

Afferratores: how tried. Second deliverance upon a distress taken for an amerciament in a leet. The parties were at issue, whether *C.* and *H.* were *afferratores curiæ predictæ*, and tried *per pais:* and, for this cause, exception taken; for it was said that it ought to have been tried by the record: and of that opinion was the court upon the first motion; because a leet is a court of record. *Vide* 27. *H.* 6. *Trial*, 11. *Cro. Eliz.* 860.

Repair of [foot] way. *Jones* excepted to a presentment in court leet at Stepney; in that it doth not appear the way is out of repair, nor that the defendant ought to repair, it being a common footway, which, the court quashed, without any certificate of amendment, *contra* of an indictment. 1 *Keble*, 527. *pl.* 19.

Infra jurisdictionem. A man [was] indicted, before the steward of a leet, of a felony done in *Dale*, and forasmuch as the indictment did not suppose Dale to be *infra jurisdictionem*, the party was dismissed, by advice of all the justices. *Keilwey*, 89.

Bounds and limits. In justification of distress, for an amerciament, defendant ought to shew the bounds and limits of the leet, or over what persons it has jurisdiction. *Skin.* 393.

Present-ment. To bailiff, justifying distress for amerciament, it sufficeth to take conusance of the presentment and no more, and *non refert* as to him, whether it be true or not. 41. *Ed.* 3. 27. 24. *Ed.* 3. 26. *Cro. Eliz.* 748.

Estreat or warrant. Bailiff, justifying distress for amerciament in trespass, ought to set out some estreat of the court, or warrant from the steward, and justify under that. 1. *Salk.* 108.

Præsentatum fuit. Bailiff, justifying distress for amerciament in leet in trespass, may plead *præsentatum fuit*, without averring the fact: for *non refert* as to him, whether the

offence was done or not, since there was a presentment. A difference subsists between replevin and trespass; in the first, the bailiff is an actor, and is to recover, which shall be upon the merits: in trespass, he is only to excuse the wrong. 1. *Salk.* 107. 3. *Salk.* 52.

In an avowry for an amerciament, in a leet, it is not sufficient to say *præsentatum fuit* at the leet, that the plaintiff did such an act, but he must aver the thing, and not rely upon the presentment. (2. *Roll.* 40.) *Raym.* 337.

In replevin, the defendant avowed, as bailiff of the dean and chapter of Westminster, for an amerciament at the court leet, for making bread wanting weight, contrary to 8. *Ann. c.* 18. which gives the leet jurisdiction. And, on demurrer, it was held to be an ill avowry; because it was not averred, that the defendant was guilty; and a difference was taken between replevin and trespass, that in trespass the conviction is sufficient to justify the officer, who is only to excuse himself, whereas, in replevin, the defendant is an actor, and makes title for a return of the goods. (Cites *Carth.* 73. *Mo.* 75. *Cro. El.* 885. *Skinner*, 587.) Another objection was taken and allowed, that it appeared the amercement was by the jury, and not by the court, as it ought to be; and that there was no affeerment. (Cites 3. *Lev.* 19. 206. 8. *Co.* 38.) For these reasons the avowry was held ill, and the plaintiff had judgement. 2. *Strange*, 847. *Stephens* v. *Haughton.* *Fitz. Gib.* 46. 109. *S. C.*

In avowry for amerciament in leet, one need not shew the names of the presentors; but, in debt for such amerciament, he shall shew their names. 9. *E.* 4. 40. Presentors.

In avowry for amerciament in a leet, the defendant must alledge prescription in the use of assessing by affeerors. *Keilwey*, 65.

Affeerors. In trespass for a distress for amerciament, defendant ought to express the names of the affeerors. *Keilwey*, 66.

An amerciament *per duodecim probos et legales homines ad tunc & ibidem jurat' ad* 40*s. afferat'*; but the warrant is always set forth. 3. *Mod.* 138.

Damages and costs. For amerciament in leets, upon a distress, damages and costs ought to be given to the avowant. *Cro. Car.* 533, 534, 535.

Process of the exchequer; action there. If a man be amerced in the king's leet, and, upon process out of the exchequer, the bailiff distrains him for the amerciament, and he brings trespass, he ought to bring this action of trespass in the office of pleas of the exchequer, for the bailiff levied it as officer of this court. 1. *Roll. Abr.* 538. And *vide Lane*, 55.

Traverse. Note, that *Shard* [*lowe*] said, if a thing be presented at the day of the leet, it is as Gospel, if it pass that day without being repealed*; and, therefore, if false presentment be made, he shall have an action of false

* *Sans estr. repel.* Since it is held for certain, that neither the tourn nor the leet have had power to hold pleas of the crown, or try any traverse whatsoever, since *Magna Charta*, and, therefore, that "there is no remedy to avoid such presentments before them, as are not traversable, but by removing into the King's Bench, &c." (2. *Hawk. P. C.* 71. 57.) It might be satisfactory to know how a man may lawfully oppose a presentment *on the day*. The books are all silent on this head; but, from a passage in the *Mirror* (*c.* 1. § 17. see *ante.*), should seem to be by complaint in the leet *ore tenus*; whereupon the steward ought forthwith to impanel another jury to try the truth of the matter. And such new jury ought, it seems, to be 24 at the least. See 17. *E.* 2. 520. 521. *ante.*

presentment on the same day against the presentors; but, if he wait till another day, he shall not be received; and therefore presentment, as well if he be not present, as if it be not repealed, is as a gospel. And, if it be presented, at the day of the view, that a man hath made a ditch across the highway, where it shall have made purpresture upon the king to the way, he shall be amerced; and, for the amerciament, the lord shall distrain: and, in avowry upon the presentment, he, upon whom the amerciament was made, shall not traverse the presentment in any one point. *Witby*; If it be presented that he has made a ditch across the highway, if the presentment be false, and by reason of that presentment it shall be abated, I say that he shall have writ of trespass against him who shall abate it; and, also, if it be presented that I have erected a house to the nuisance of the highway, if the presentment be false, I say, that it being thrown down, I shall have writ of trespass. *H.* 21. *E.* 3. *Fitz. Barre*, 271.

Avowry was made for 16 oxen, for this, that the defendant hath view of frankpledge in C. at which view, on such a day, was presented, by the chief pledges, that J. harboured W. beyond a year and a day, that he was not put in dozeins; for which J. was amerced at 6*d*. for which he avows, &c. to which the plaintiff said, that, whereas it is supposed, that W. was resiant there for a year and a day, he was sometimes there, and sometimes in another view adjoining, &c. *Morice*: This is not traversable, because it is presented in the leet. Wherefore, he says, that he was resiant in another hundred and view, and not within this view, [and this he is] ready [to avow]; and the other demurred, for that he cannot traverse the pre-

sentment. And by *Belknap*, a thing which is not presented, in the leet, shall be presented in the sheriff's tourn; and, if it be not presented there, then in the King's Bench, when they come into the country. And by *Mombray*, a man shall have traverse to the presentment in the King's Bench; because process is there made against the party to answer; but no such process is made in the leet to answer, therefore it is not traversable, *nisi in speciali casu**. And, by *Finch*, where the party is not otherwise in damage, by presentment in the leet, than by the amerciament there, the presentment is not traversable; *contra*, where it touches the inheritance, as of nuisance, and such like. *Kirton*, where a man distrains for amerciament in the leet, for a way not repaired, which is without the jurisdiction of his leet, the plaintiff shall recover damages, *quia extra precinctum, &c.* But it seems that there is difference between that case and this, for one is local, the other not; and, therefore, it seemeth that it is not traversable *ut hic*. But, by *Thorp* and *Finch*, he shall plead to the jurisdiction of the leet, and therefore shall have the plea, *et adjornantur: quære.* 41. *E.* 3. 26. *Br. Presentments in Courts*, 1.

Trespass; the defendant justified for this, that the plaintiff was amerced in the leet of K. for not repairing of a bridge in D. *ratione iii. actem ibidem*, by which he and his ancestors, *de tempore*, &c. have made the bridge; the plaintiff said, that [neither] he nor his ancestors have repaired the bridge, &c. and

* So that this seemeth a general learning, that wheresoever any *processe ad respondendum* goeth out upon such an indictment as is traversable, there also the party may affer, and ought to have his traverse against it. *Lambard's Eirenarcha*, 544.

this is traversable; because it goes to bind freehold, and *e contra* of bloodshed, breach of assize of bread and ale, and all such like. 45. *E.* 3. 8. *Br. Traverse d'Office*, 42.

Candish: In case I build a house on my land, and it be presented in the leet, that it is across the highway, which is false, if the house be pulled down, by force of that presentment, I shall have assise, notwithstanding such presentment, because it touches freehold; but, in case it be only of a thing suddenly happened, of which amerciament lies, and nothing else, as of bloodshed, of ale, or beer *(brasery)*, against the assise, and such like, I grant well that the averment does not lye against the presentment. *Huini* denied his first case, and said, that he should not have assise against the presentment, &c. 45. *E.* 3. 8.

Where a man justified for this, that the plaintiff was presented in the leet for harbouring J. who was not sworn to the king, &c. and did not say it was presented by 12, nor affirmed by 12, therefore it was awarded, that he who distrained should be in mercy; *quod nota*, and so observe, that a man shall have averment against presentment made in leet, which was not by 12; but, if it had been made by 12, he should have no remedy but distress against the 12, for maintaining their presentment; and writ of false presentment lies not, but for those who shall be grieved by false presentment made by twelve. 45. *E.* 3. 26. *Br. Leete*, 7.

It was found, before the verderors and steward of the forest, that one H. hath inclosed and made a park of what is parcel of the forest; and this presentment was made by 36 men, and was removed by a suggestion, and the opinion [of] *Thorp* [was], that the

party shall not have traverse to this; for, to such manner of process, nor to the presentment, in a leet, a man shall not have traverse, except it touch his freehold or inheritance, and then he ought to make title, and shall not maintain general traverse. *H.* 50. *E.* 3. *Fiz. Ass.* 442.

Scrope: Divers things, in a leet, are presentable, which bind the inheritance; as purpresture upon the highway, and such like, to which a man shall have traverse. *E.* 3. *Keilwey*, 141.

Presentment for not cleansing a highway. It was said, that when the presentment is on account of the person, it is not traversable; otherwise, where it is on account of the land, whereby the freehold is charged, there the presentment is traversable. *Per Fairfax*, justice: Presentment, in leet, removed into another court, is not traversable, if it do not touch freehold; but indictment before justices of peace removed is traversable. *Hussey*, chief justice: In the one case, process is used to be made, and in the other not; and where process is made, and [where] it touches freehold, he may traverse it*. 5. *H.* 7. 3. 4. *Br. Presentment in Courts*, 15.

In trespass for a horse taken wrongfully, &c. the de-

* But I take it the party must first remove the presentment into the King's Bench, and there traverse it: for, in the court leet, (in my opinion) there can be no traverse taken or tried, no more where the presentment toucheth freehold, than where it only concerneth a personal wrong; therefore, the reason, alledged in 5. *H.* 7. cannot be the true cause, wherefore, in personal wrongs, the presentments cannot be traversed; but, the very true reason therein is, as I take it, because these petty presentments be of such petty trifling matters, that, in avoidance of trouble, the law esteemed them not worthy of traverse and trial. *Callis on the Statute of Sewers*, 213. But see *Keilwey*, 66, &c.

fendant said, that an abbot was lord of a hundred, in which he had a leet, and the plaintiff was seised of an acre of land, within the same hundred: and that, at such a court before the steward, it was presented, that the plaintiff, *ratione tenuræ suæ in prædicta acra terræ*, was bound to scour a ditch, beyond time of memory, and did not; whereby, &c. he was amerced by two affeerers of the court at 3d.; and, for the 3d. for that amerciament, the defendant, by virtue of a precept, distrained the horse within the precinct of the leet. And it was argued, for the plaintiff, that this presentment was a thing which bound the freehold and inheritance of the party; and, in such cases, where a presentment, in a leet, touched the inheritance or life of a man, in those cases a man should have traverse to the presentment. And *Frowike* said, that the presentment, in a leet, shall be intended as true as the evangelist; and this is said, by the same words, in our books, by reason it is a thing found with such circumstances, *viz.* first, by the headboroughs; and, secondly, by inquest of twelve; and, lastly, it is affirmed, by the grand inquest; and, also, by their inquiring within such a small precinct of place, *sc. infra visum*, &c. and of a thing by such shortness of time, and freshly in memory, *viz.* since the last preceding court; wherefore, by all these causes, the party shall be condemned by the presentment itself, so that he shall have no manner of answer thereto, without the matter touch freehold or the life of a man, *quod fuit concessum*. And some moved, that, for this cause, a man should have action against the presentors in such case, where he could not traverse: *sed quære de hoc.* And, afterwards, *Frowike* said, that there was a writ *de falsa præsentatione* in the *Register*, but I never saw that writ in use; but,

he was of opinion, that a man shall never avoid the presentment, in a leet, without it touch freehold in writ of trespass; but, where the presentment prevails, it stands in its force, whereby, &c. *Frowike:* If a man dwell without the precinct of the leet, and is amerced for an affray or purpresture within the precinct, he shall never avoid this presentment by reason of his non-resiancy; but, in the resiancy itself, he shall avoid the presentment in trespass; but in case, as if he dwell without, and is amerced, within the leet, for not coming to the leet, for there the presentment is void in itself, and *coram non judice.* So, if they present an affray, or a purpresture, or the not scouring of a ditch, by reason of land, where all the land and the ditch are both out of the precinct of the leet, in these cases the party shall have his answer to the jurisdiction of the court, without this that he was resident within the precinct of the leet. So, in those cases, the party shall have his traverse to the jurisdiction and not to the fact; but yet I agree well, that he shall have traverse in a place convenient, where the presentment touches the life of a man or freehold; but this is by removing the presentment into the King's Bench, and, then, there traversing the prescription, or the matter of the presentment, as the case requires. But, in any case, presentment, in a leet, shall be tried in another action, the presentment being in its force below; as, if I build a house in my own soil, and it is found that the house is built to the common nuisances, as a purpresture, by force of which, one of his own wrong pull down my house, I shall try this purpresture, in assise, between me and him who pulled down my house; for, in such case, no process shall be made out of the court to abate such purpresture; but, if it be a purpresture in

fact, it is lawful, to every liege of the king, to abate this purpresture, but this at his peril. But here the defendant levyed the amerciament, by virtue of a precept, which is his warrant, and so diversity, &c. *T.* 20. *H.* 7. *Keilwey*, 66. 66. *b.* 67.

If a presentment be in a leet against me for common nuisance, which doth not touch my inheritance, I shall not traverse it, but it behoves me to make fine; otherwise, it is of a thing which shall bind my inheritance. 12. *H.* 8. 11.

Shelley said, that a presentment of bloodshed, in a leet, cannot be traversed; for, by the ancient books, it is reputed for Gospel, if it pass the day on which it is presented. But, of a presentment of a purpresture, nuisance, or any such like thing, which toucheth freehold and inheritance, a man shall have traverse; and this diversity had been always taken for law; inasmuch as this is the very determination and end of the law. *Quod Bauldwin concessit. Fitzherbert* said, that *Britton*, who is good authority, said, that every presentment is traversable, which is presented in a leet, and also in the sheriff's tourn, out of which leets were originally derived, &c.* *H.* 8. *Dyer*, 13. *b.*

A fine is not traversable. 8. *Rep.* 41.

Resolved, that when a fine is imposed, against law,

* Without disputing the authority of this ancient writer, one would be glad to know where he has said that every presentment is traversable; certainly, if the passage in *Coke*, beginning "As to presentments, &c." (see *ante*) be that alluded to by the learned judge, it seems to prove very little to his purpose. And note, that though Glanvil, Bracton, Britton, and Fleta, may be vouched for antiquity and ornament, in cases where they concur with the later authority of the law, they are not to impugn the common experience and allowance in judicial proceedings at this day. 8. *Rep.* 35.

as joint, where it should be several, or if it is unreasonable, it may be avoided by plea and judgment of the court in which the suit depends; for other remedy is not given to him. 11. *Rep.* 44. *b.*

A writ of error was brought to reverse an amerciament (being affeered) in a court leet: the error assigned was, because the same was an unreasonable amerciament. *Noy:* After that this amerciament is once affeered, you shall not afterwards have a writ of error, and assign for error that this amerciament was unreasonable, and you shall never have a *moderata misericordia*; in such a case, the whole court agrees clearly in this, that this is no error now to be assigned; and, therefore, by the rule of the court, the same was affirmed. 1. *Bulstr.* 125.

A presentment, in the leet or sheriff's tourn, after the day of the presentment, bindeth the party for ever, and is not traversable, but in cases that touch freehold; as, that one ought to cleanse the highway, or such like, *ratione tenuræ suæ*: therefore, the course is to remove such presentments into King's Bench by a *certiorari*, where he may traverse them. *Finch, L.* 386.

It was said by *Hale, ch. just.* that, if there be a presentment, in a leet, for a personal misdemeanor, if it pass that day it is a conviction and conclusive; but, if it be for a nuisance, or any matter that concerns freehold, the party may come afterwards and traverse: and, he said, that when he sat in the exchequer, a *quo warranto* issued out against the water-bailiffs, for convicting men upon presentments, and fining them without more ado; and, when the parties brought actions against them for levying the fines, and used to cast them, they would afterwards estreat the fines in the

exchequer, and then levy them by process issued out of the exchequer, and then the parties had no remedies but an action on the case for estreating things not estreatable; but, for this cause, their patent was repealed upon this *quo warranto*, for men ought not to be convicted barely upon a presentment, unless in those cases *supra*. *Freeman*, 339.

Some presentments are of themselves convictions, and not traversable; and, there are no presentments, besides what are before mentioned, that are in themselves convictions, and not traversable: but a presentment, in a leet, of bloodshed, or the like, and in the *Swanimote* court of the forest, for offences of *vert* and *venison*. But even those presentments are traversable also in two cases, viz. 1. if the offence presented be out of their jurisdiction; 2. or if the presentment be such as concerns the freehold, as presentments of nuisances, or such matters as charge the freehold. 41. *E.* 3. 26. *b.* 45. *E.* 3. 8. *b.* *Hale, P. C.* 153. 155.

Powis prayed a *certiorari* to remove presentment in leet for using trades, not having served apprentice, &c. and they [the court] conceived, that there is nothing but nuisance, and *sang espandue*, that is untraversable; and these, when they concern life or freehold, are traversable; but the question hath been where, and *Twisden* conceived it should be here [*i. e.* in *B. R.*]; the court ordered the *certiorari* to be returned. 2. *Keble*, 50.

By *Wild*, the presentment in leet is not traversable, unless on the same day, because every resiant is presumed present. *Twisden*, justice, *contra*; where freehold is in question, presentment may be traversed at any time; and so, where remedy is given by statute. 3. *Keble*, 646.

the *traverse* in the principal case was well taken; for, they held, that presentments, in the *quarter sessions* of the peace, and even in *B. R.* are traversable; and, if it is so in courts superior to the leet, *a fortiori*, it must be so in presentments at the leet. Besides, if this presentment should be removed by *certiorari* into *B. R.* it is clear that it is traversable. *Carthew*, 73, 74.

Avowry for an amerciament, in a leet, for melting stinking tallow, &c. The plaintiff replied, *de injuria sua propria absq' hoc*, that he melted, &c. *Pollexfen*, that is not a matter traversable. *Fitz. Barr.* 271. 5. *H.* 7. *fo.* 3. 19. *H.* 8. *fo.* 11. *Tremaine, contra*, it may be traversed in a collateral action. *Dy.* 13. *b.* *Bro. Presentment*, 156. *Powel, J.* Where it concerns freehold it is traversable, otherwise not. *Mo.* 574, 627. 2. *Cro.* 835. and 1. *Leon.* 242. *Comb.* 76.

A presentment, in a court leet, is traversable; but no action lies against the steward, for awarding process upon it. Such presentment is traversable in replevin, not in trespass, nor in an action against the judge. But where a fine is imposed, the matter, for which &c. is not traversable. 1. *L. Raym.* 470.

Note. That a presentment, in a court leet or sheriff's tourn, after the day of presentment, subjects the party forthwith to a fine or amerciament, and is not traversable, unless it toucheth the party's freehold; as, that one ought to cleanse the highway, &c. by reason of his tenure. Here the course is to remove such presentments into the King's Bench by *certiorari*, where the party may traverse it. Neither the tourn or leet have power to try any manner of traverse. *Wood's Inst.* 486.

A presentment, generally taken, is a very compre-

hensive term; including, not only presentments, properly so called, but also inquisitions of office, and indictments by a grand jury. Some of these are in themselves convictions, and cannot afterwards be traversed or denied. Of this nature are all presentments of petty offences in the sheriff's tourn or court leet, whereupon the presiding officer may set a fine*. Other inquisitions may be afterwards traversed and examined. 4. *Black. Com.* 301.

Where a presentment, in a leet, is removed by *certiorari*, the stile of the court must be set out exactly; but there needs not such nicety in pleading. 11. *Mod.* 228.

Debt for an amercement in a court leet. The declaration states the amercement to have been affeered at a court holden before the steward; but, it appeared in evidence, that the court was really holden before the deputy-steward. The variance is fatal. 1. *H. Blackst.* 162.

Debt for an amercement. The declaration stated that the defendant was summoned to serve on the jury of the court leet *and court baron*; but the summons was, to serve on the jury of the court leet only. The plaintiff non-suited. 1. *H. Blackst.* 163. *note.*

A man was indicted, upon the stat. 5. Eliz. of perjury in a court leet: and the indictment was, that he, at the court leet of the earl of Bath, *super sacramentum suum coram seneschallo, &c.* and exception was taken, because it said "at the leet of the earl of Bath"; whereas, leet is the king's court, though another hath

* There is a slight inaccuracy here. The presiding officer, in the tourn or leet, has no power to set a fine on any offence presented.

the profit and commodity of it. And, it was said, that a steward of a leet was an officer of record, and also that his oath was, if he had made any rescous or not with which he was charged. *Drew, J.* It is not within the statute of 5. Eliz. for then it ought to be before a jury in giving evidence, or upon some articles. But the court was clearly of opinion against him. *Godbolt,* 71.

Debt by lord of the leet, against the heir, for an incroachment on the highway by the ancestor, continued by the heir, and for which the ancestor was indicted in the leet, and on which indictment an order was made to reform the incroachment by such a day, upon the pain of 40*s.* and, for not reforming thereof, this action is brought for the 40*s.* and declares as before, and held good without alledging notice of the order; for, being within the jurisdiction of the leet, he ought to take notice at his peril. *Viner, Incroachment, pl.* 2. *(Condition, (B. d.) pl.* 6.*)*

APPROVED PRECEDENTS

OF

PRESENTMENTS AND JUDGMENTS

IN

THE LEET*.

THE jurors, for the lady the queen, upon their oath, say, that R. S. &c. at I. within the jurisdiction of this court, as a felon of the lady the queen, one hundred angels of gold, and three hundred groats falsely and feloniously coined and fabricated (the letters patent of the lady the queen in that behalf not before obtained), against the peace of the said lady the queen, that now

High treason, as felony.

* Presentments in leet ought to be certain, *viz.* to shew at what place the nuisance is made, and to say within the jurisdiction of the court; for it is the declaration of the king, which ought to be good to every common intent. *Br. Leete*, 33. and *vide Keilwey*, 89.

To the nuisance of the king's subjects, or *to common nuisance*, ought to be in every presentment [*sci.* of nuisance]. *Cro. J.* 382. And *to the nuisance of several persons* will not do. 3. *Keble*, 106.

Presentment of a thing done before the last court is of no force. 3. *Keble*, 644.

It is not necessary that a presentment, in the leet, should be either sealed or indented. 3. *Bur.* 1860. *Vide tamen W.* 2. *c.* 13. 1. *E.* 3. *st.* 2. *c.* 17. *Mirror*, *c.* 1. § 17.

is, her crown and dignity, and against the form of the statute in such case made and provided. *Kitchin*, 100.

Rape. They also present, that A. B. of I. aforesaid, yeoman, on such a day, &c. at I. within the jurisdiction of this court, the close and house of one, &c. broke and entered, and upon one Katherine, &c. the daughter, &c. in the peace of God and the lady the queen being, made assault, and her with force and arms then and there against her will ravished, and her carnally knew, against the peace, &c. *Kitchin*, 100.

Arson. They also present, that one T. of I. aforesaid, yeoman, on such a day, &c. at I. within the jurisdiction of this court, with force and arms, &c. wilfully and feloniously, of his malice aforethought, the house of one J. S. burned, contrary to the peace of the lady the queen. Therefore it is commanded, to the bailiff, to seize all his lands and tenements, goods and chattels, that he may answer thereof to the lord of this manor. *Kitchin*, 100.

Robbery. They also present, that E. F. of I. aforesaid, labourer, on such a day, &c. at I. within the jurisdiction of this court, with force and arms, and against the peace, &c. upon one T. D. at, &c. within the jurisdiction of this court, in the queen's highway, there in the peace of God and the lady the queen being, made assault, and the said T. D. then and there robbed, and sixteen groats of silver, and one angel of gold, of the goods and chattels of the aforesaid T. D. in his certain purse then and there being, from the person of the same T. feloniously took and carryed away, against the peace of the lady the queen, her crown and dignity. *Kitchin*, 101.

Burglary. They also present, that B. D. of I. aforesaid, yeoman, on such a day, &c. at I. within the jurisdiction

of this court, about the hour of nine in the night of the same day, the house and mansion of one, &c. as a felon of the lady the queen, broke and entered, with intention to rob the aforesaid, &c. and six angels of gold, of the goods and chattels of the aforesaid, &c. then and there in a certain chest being, feloniously took and carryed away, against the peace, &c. *Kitchin*, 100.

They also present, that J. W. of I. aforesaid, gentleman, on such a day, &c. at I. within the jurisdiction of this court, a certain fallow deer, tame, and bearing a bell about its neck, of the value, &c. of the goods and chattels of one, &c. then and there found, feloniously took and carryed away, against the peace, &c. Therefore it is commanded to the bailiff, as above, &c. *Kitchin*, 100. Larceny.

They also present, that J. L. of I. aforesaid, yeoman, on such a day, &c. at I. aforesaid, within the jurisdiction of this court, about the hour of one in the night of the same day, a certain trunk of one, &c. broke and entered, and ten fishes, called pikes, of the value, &c. of the goods and chattels of the aforesaid, &c. from the trunk of the same, &c. then and there feloniously took and carryed away, against the peace, &c. Therefore, &c. *Kitchin*, 100.

They also present, that W. P. of I. aforesaid, labourer, on such a day, &c. at I. within the jurisdiction of this court, with force and arms, and against the peace, &c. the close of one, &c. at I. aforesaid, broke and entered, and one black sattin waistcoat, of the goods and chattels of the aforesaid, &c. then and there found, feloniously took and carryed away. Therefore it is commanded to the bailiff, &c. *Kitchin*, 100.

Petit larceny. They also present, that P. I. of I. aforesaid, yeoman, on such a day, &c. the close of one, &c. at I. aforesaid, broke and entered, and one towel, of the value of sixpence, of the goods and chattels of the aforesaid, &c. then and there found, feloniously took and carryed away. Therefore it is commanded to the bailiff to seize all his goods and chattels into the hands of the lord. *Kitchin*, 100.

They also present, that A. B. of I. aforesaid, yeoman, on such a day and year, &c. at I. within the jurisdiction of this court, about the hour of one in the night of the same day, a certain dovecote of one, &c. broke and entered, and forty pigeons of the value, &c. of the goods and chattels of the aforesaid, &c. from the house of the same, &c. feloniously took and carryed away against the peace, &c. Therefore it is commanded to the bailiff, &c. as above. *Kitchin*, 102.

Felony and flight. They also present, that E. L. of I. aforesaid, yeoman, on such a day and year, &c. at I. within the jurisdiction of this court, a certain white gelding, of the value, &c. of the goods and chattels of one, &c. in the common field there being, feloniously stole, took, and carryed away: And, that the aforesaid E. L. for the felony aforesaid, withdrew himself and fled. Therefore it is commanded to the bailiff to seize two cows, of the goods and chattels of the aforesaid E. L. as escheats and forfeitures to the lord; and that they be safely kept to the use of the lord, &c. or thus, to the use of the queen. *Kitchin*, 101.

Prison breach. They also present, that whereas one B. R. of I. aforesaid, yeoman, was taken and arrested for suspicion of a certain felony, and put in the stocks; one J. F. of I. aforesaid, labourer, on such a day and year, &c. at I. aforesaid, the aforesaid stocks with force and arms and feloniously broke, and the afore-

said B. R. then and there to escape and go at large permitted, against the peace. Therefore it is commanded as before, &c. *Kitchin*, 101.

They also present, that T. J. of I. aforesaid, yeoman, on such a day, &c. at I. within the jurisdiction of this court, one calf, of the value, &c. of the goods and chattels of one J. B. then and there found, feloniously took and carryed away. And that W. Q. bailiff of the manor aforesaid, on such a day and year, &c. at I. aforesaid, the aforesaid T. J. for suspicion of the felony aforesaid, arrested; and that W. F. of I. aforesaid, labourer, with force and arms, &c. at I. aforesaid, on the said day and year, upon the aforesaid W. Q. in the peace of God and the said lady the queen being, made assault, and the aforesaid T. J. in the custody of the aforesaid W. then and there feloniously took, forced, and rescued, and at large permitted to go, against the peace, &c. Therefore it is commanded, as above, &c. *Kitchin*, 101. Rescous of felon.

They also present that Q. J. before such a coroner, on [in and at] such a day, year, and place, of his own free will, acknowledged himself to have done felony on [in and at] such a day, year, and place, for which recognition he abjured the realm, &c. and afterward returned without the charter of the king, and remains within this lordship. Therefore it is commanded to the bailiff or constable of the same lordship, the same Q. bodily to attach, and to the next gaol of the lord the king lead, there under close custody to remain until, &c. And it is commanded to the bailiff to seize his goods and chattels. *M. T. C. B.* 11. Outlaw returned.

They also present, that W. S. of I. aforesaid, yeoman, within the jurisdiction of this court, counseled, instigated, procured, comforted, and abetted one L. M. Accessary before the fact.

&c. one black cow, of the value, &c. of the goods and chattels of one, &c. then and there found, feloniously to steal, take, and carry away: And the aforesaid L. by virtue of the counsel, instigation, procuration, comfort, and abetting aforesaid, &c. the said cow, on such a day, &c. in the year, &c. feloniously stole, took, and carryed away. *Kitchin*, 100.

Felon and accessary after the fact.

The jurors also say, upon their oath, that W. C. by night, in such a year, &c. the close of J. T. at I. broke and entered, and capons, geese, and hens, of the value of three shillings, there found, feloniously took and carryed away; and that J. R. him received, entertained, and comforted, knowing him to be a felon, and felony so to have committed: And it is commanded to the bailiff, that he as well the aforesaid W. as the aforesaid J. attach, and to the next gaol lead, &c. *M. T. C. B.* 10. *b.*

They also say, that W. R. [in and at] such a day, year, and place, &c. within the lordship of A. stole one black horse, of the value of 20s. of one J. B. and that K. C. knowing him the felony aforesaid so to have committed, him receives, entertains, and comforts. Therefore in mercy. And it is commanded to the bailiff to seize the horse aforesaid forfeited, and to answer of the issues. *M. T. C. B.* 10. *b.*

Deciners in default.

They also say, that J. and W. are deciners, and have made default, &c. *M. T. C. B.* 11. *b.*

Default of suit.

They also present, upon their oath, that J. R. R. W. and J. W. are resiants within the precinct of the view of frankpledge aforesaid, and at this day have made default. Therefore every of them in mercy, as appears above their heads. *Kitchin*, 103.

Resiants not sworn.

They also present, that R. W. W. F. R. B. and W. G. have inhabited within the precinct of this view of

frankpledge, for the space of one year and one day, and upward, and are not sworn to the queen for ligeance. Therefore each of them in mercy, as appears above their heads. *Kitchin.*

Hue and cry not followed.

They also present, that the aforesaid T. D. being robbed, raised great hue and cry, and the aforesaid E. F. as a felon of the lady the queen, on the said day and year, from the place aforesaid, where he was so robbed, freshly followed unto the aforesaid town of, &c. and that no inhabitant there the felon aforesaid, upon the hue aforesaid, followed, and so the felon aforesaid escaped, in contempt of the said lady the queen, and against the form of the statute of Winchester, in such case made and provided. Therefore the aforesaid town of, &c. in mercy, &c. *Kitchin*, 101.

Chief pledges in default.

They also present, that R. B. and C. D. are chief pledges, and make default. Therefore they in mercy. *M. T. C. B.* 10.

Constable in default.

They also present, that W. G. is constable, and is not here at the view of frankpledge, to present that which to that office belongs, but hath made default. Therefore he in mercy 2*s*. *Kitchin*, 105.

Aletaster in default.

They also present, that R. S. is aletaster, and is not here at the view of frankpledge to present that which to that office belongs, but hath made default. Therefore he in mercy 2*s*. *Kitchin*, 105.

Meat-searchers in default.

They also present, that B. R. and C. D. are meat-searchers, that should be here at the view of frankpledge to present that which to that office belongs, and have made default. Therefore each of them in mercy 2*s*. *Kitchin*, 105.

Scavengers in default.

They also present, that T. J. and W. J. are scavengers, and ought to be here at the view of frankpledge,

and have made default. Therefore each of them in mercy 6*d*. *Kitchin*, 105.

Affray. They also present, that J. S. made affray within the jurisdiction of this court, and drew blood. Therefore he in mercy 3*s*. 4*d*. *Kitchin*, 105.

Hue wrongfully raised. They also say, that K. B. and C. D. unjustly raised great hue, in disturbance of the peace of the lord the king after the last view held, to the nuisance of their neighbours at H. Therefore in mercy. *M. T. C. B.* 11. *b*.

Breach of assise. They also say, that A. and C. are bakers of mans' bread, and have broken the assise. Therefore they in mercy. *M. T. C. B.* 11.

They also present, that E. W. and W. X. by their wives, are common tipplers (*i. e.* retailers) of ale, and have sold ale by unlawful measures, and have broken the assise. Therefore each of them in mercy, as appears above their heads. *Kitchin*.

Excessive toll. They also present, that J. H. miller, of this lordship or manor, hath taken toll unjustly and excessively, of the meal of his neighbours. Therefore he in mercy. *M. T. C. B.* 11.

Unwholesome bread. They also present, that W. M. and R. B. are common bakers of mans' bread, and for divers times have baked unwholesome bread, and have broken the assise. Therefore each of them in mercy, as appears above their heads. *Kitchin*, 106.

Unwholesome ale. They also present, that R. W. and J. D. are common brewers, and have brewed for divers times unwholesome ale, and have broken the assise. Therefore each of them in mercy, as appears above their heads. *Kitchin*, 106.

Nuisance. They also present, that there is a hedge of great thickness, and that the branches thereof hang over

the lane, called King's Lane, to the nuisance of the carriages going along the same lane, in the default of W. C. Therefore it is commanded to him to cut down or lop the same, before the feast, &c. under the pain, &c. *Kitchin*, 106.

They also present, that W. D. hath accroached to himself of the common water, land, &c. to the grievous nuisance of his neighbours. Therefore he in mercy. And it is commanded to the bailiff to seize into the hand of the lord, &c. *M. T. C. B.* 10. *b.*

They also present, that R. W. hath placed a certain dunghill over-against his house, near the queen's highway, to the nuisance of the people of the lady the queen. Therefore it is commanded to him to remove and carry away the same before the feast &c. under the pain &c. *Kitchin*, 104.

They also present, that there is a certain gutter, leading from the house or kitchen of T. I. by which nasty or stinking water is conducted into the queen's highway, to the great nuisance of the queen's highway, and of all carriages to be carryed along the same by the people of the lady the queen. Therefore it is commanded to him to amove or stop up the same before the feast &c. under the pain &c. *Kitchin*, 104.

Diversion of water-course.

They also present, that R. C. of I. aforesaid, yeoman, diverts the common course of a certain rivulet, leading by the house of one T. H. out of the right course in which it used to run. Therefore it is commanded to him to let it go in its right accustomed course, before the feast, &c. under the pain, &c. *Kitchin*, 104.

Repair of bridge, &c.

They also present, that the common way, leading through the field called the Prebend Field, is a common way for passing and riding, and was so used from time whereof the memory of man is not to the con-

trary; and that the gate and bridge, being beyond the further bridge, ought to be maintained and kept by the tenant of the land, and now are not. Therefore it is commanded to the tenant of the land the same gate and bridge to amend and repair before the feast of Saint John the Baptist next ensuing, under the pain, &c. *Kitchin*, 104.

Ditch not scoured. They also present, that the king's way at C. is very dangerous and founderous, in defect of scouring the ditch of J. B. Therefore he in mercy. *M. T. C. B.* 10.

They also present, that W. C. hath a ditch not scoured at &c. containing twelve perches of land, to the nuisance of the people of the lord the king. Therefore he in mercy. *M. T. C. B.* 10.

They also present, that there is a certain ditch unscoured and uncleansed, in the default of B. S. to the nuisance &c. Therefore he in mercy 12*d*. And it is commanded to him to scour or cleanse the same before the feast &c. under the pain of 2*s*. *Kitchin*, 104.

They also say, that the lord hath a ditch not scoured of the length of twelve perches. Therefore it is commanded to the bailiff to amend [the same]. *M. T. C. B.* 11.

Common scold. They also present, that N. C. widow, is a common scold with her neighbours, and a common breaker of hedges; and [that] she is not of good fame and government. Therefore she in mercy, as appears above, &c. *Kitchin*, 104.

Entertainer of whores. They also present, that H. B. widow, is a common entertainer and receiver of whores and women of ill fame and conversation, to the great nuisance of her neighbours. Therefore she is amerced 2*s*. 2*d*. *Kitchin*, 104.

Vagabond. They also say, that K. of sound mind and good health, is a vagabond, who wakes by night, and sleeps

by day, and nothing labours. Therefore &c. *M. T. C. B.* 11.

They also present. that W. C. made assault upon J. S. with a staff, against the peace of the lord the king. Therefore he in mercy. *M. T. C. B.* 10. Assault.

They also present, that M. S. unjustly and against the peace, drew blood upon R. B. with a sword. Therefore he in mercy. And the said sword remains to the lord by judgment of forfeiture. *M. T. C. B.* 10. *b.* Bloodshed.

They also present, that as one A. B. servant of W. C. the lord's bailiff, was bringing certain chattels of one R. G. unto the lord's pound, there to be impounded, came one E. P. with great violence into the pound aforesaid, with one sword, of the value of 5*s.* and then and there the aforesaid A. struck with the same sword upon the head, and so shed blood upon the same A. B.: by reason of which stroke, the aforesaid A. B. fell to the ground, as if he were dead. Therefore the said E. P. in mercy. And affeered by the chief pledges at five shillings. *Kitchin*, 104.

They also say, that a certain unknown felon stole one horse, of the value of 20*s.* without this lordship. Therefore it is commanded to the bailiff, to seize the said horse into the hand of the lord by reason of forfeiture. *M. T. C. B.* 10. *b.* Waif.

They also present, that one M. S. came within the jurisdiction of this view of frankpledge, and hither brought certain goods and chattels by her stolen (to wit), one linen shirt, of the value, &c. and divers other vestments—in English one smock, one petticoat, and one shirt; all which things are worth 20*s.* and no more: and all and singular which things were hither brought by the aforesaid M. and that the same M. here within the ju-

risdiction of this manor, the same waived, left, and fled from; whereby all the goods and chattels aforesaid have come to the lord of this manor. Whereupon, it was commanded to the bailiff to seize [the same] into the hands of the lord, as escheats and forfeitures to the lord; and he did so, and the goods and chattels aforesaid were delivered to the lord in this court. *Kitchin*, 103.

Estray. They also say, that one black ox, or one horse, &c. came, as an estray, within this lordship, at the feast of Easter last past. And it is commanded to the bailiff to proclaim [the same] in the market, and in the church, as the manner is, &c. *M. T. C. B.* 10. *b.*

They also present, upon their oath, that on the twentyeth day of May, in the year of the reign of our lady queen Elizabeth that now is, came within this lordship one grey horse, as an estray, and remains in the custody of X. D. to be proclaimed. *Kitchin*, 105.

They also present, that there is one bay colt, of the age of four years or more, which came within this lordship as an estray, on the 9th day of September, in the year of the reign of the said lady the queen the twentyeth, of the value of 24*s.* and hath remained in the custody of the bailiff for the space of one year and one day, after three proclamations for three several days, made according to the form of the statute. Therefore the property of the same colt is in the lord. *Kitchin*, 105.

Outlaw. They also say, that O. P. is outlawed on (in and at) such a day, year, and place, at the suit of K. O. in a plea of trespass. Therefore it is commanded to the bailiff to seize his goods and chattels to the use of the lord, &c. *M. T. C. B.* 11.

They say, upon their oath, that D. gives to the lord, as of certainty *(de certo)*, for a common fine at this day of ancient custom, as appears *in capite*. *M. T. C. B.* 10. Common fine.

They also say, that they give to the lord, as of certainty *(de certo)*, for a common fine, at this day of ancient custom, 6*s.* 8*d.* *Kitchin*, 102.

ORDERS UPON PAIN.

It is ordained, that R. B. do make and scour his ditch, at the lower end of Great Hill, containing, by estimation, twenty perches, before the feast of the nativity of Saint John the Baptist next coming, under the pain, for each perch thereof, of 8*d.* *Kitchin*, 102.

It is also ordained, that T. M. do reform and throw open a certain parcel of land, lately by him incroached, between Washe Lane and Peckham Rye Common, before the feast of All Saints next coming, under the pain, for each perch not reformed and thrown open, of 20*d.* *Kitchin*, 102.

It is also ordained, that no one do permit his beasts (to wit), his oxen or cows, to go into and feed upon the common of this lordship, nor in the lanes to the same manor belonging, without a keeper, under pain of forfeiting to the lord, for each of them, for each time, 2*d.* *Kitchin*, 106.

It is also ordained, that W. J. do remove his dung-hill, lying by the queen's highway, over-against his house, before the feast of Easter next, under pain of forfeiting to the lord 10*s.* *Kitchin*, 106.

It is also ordained, that J. F. do make and maintain

a bridge in his close, called Great Colmans, in the way leading from Islington to Hoggesden, under pain of forfeiting to the lord 10*s*. *Kitchin*, 106.

It is also ordained, that every one do yoke or ring his hogs before the feast of St. Michael the Archangel next, and the same keep so yoked or ringed until the feast of Saint John the Baptist then next following, under pain of forfeiting to the lord, for every hog, for every week, 3*s*. 4*d*. *Kitchin*, 107.

PAIN INCURRED.

They also say, that B. C. had, at the day of the last court, to amend one ditch, in length twelve perches, upon pain of 40*d*. and that he hath not made the said ditch. Therefore he incurs the said pain. And it is commanded to the bailiff to levy the said pain, so forfeited, to the use of the lord. *M. T. C. B.* 11.

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